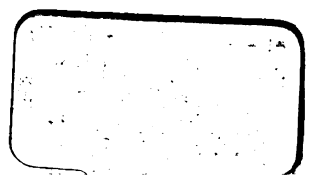

ON THE

EVIDENCE OF ACCOMPLICES.

BY

THE RIGHT HONOURABLE HENRY JOY,

LORD CHIEF BARON OF HIS MAJESTY'S COURT OF EXCHEQUER IN IRELAND.

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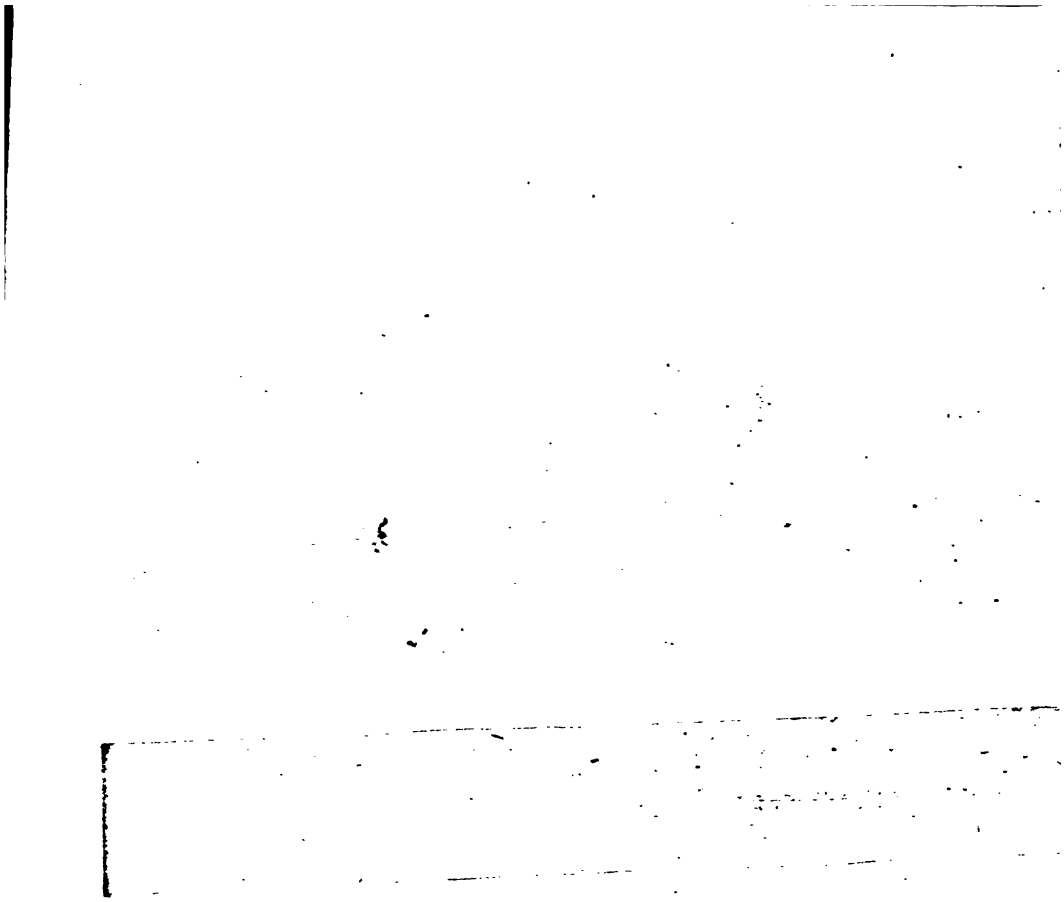


PREFACE.

THIS little Tract was written many years ago. It was occasioned by the appearance of an anonymous work on the same subject, in which the author lays down what he asserts to be the established practice; or rather, as he calls it, the fixed rule of evidence, as to the testimony of an accomplice, and the corroboration which it ought to receive, before the judge can permit it to go to the jury.

The principles which the author maintains appeared to me to be erroneous; and not supported by the cases which he cites. The cases appear to have been inaccurately stated; and the decisions of the judges garbled and incorrectly given; whilst the author's deductions are inconsequent, and his arguments often contradictory. His work, how-

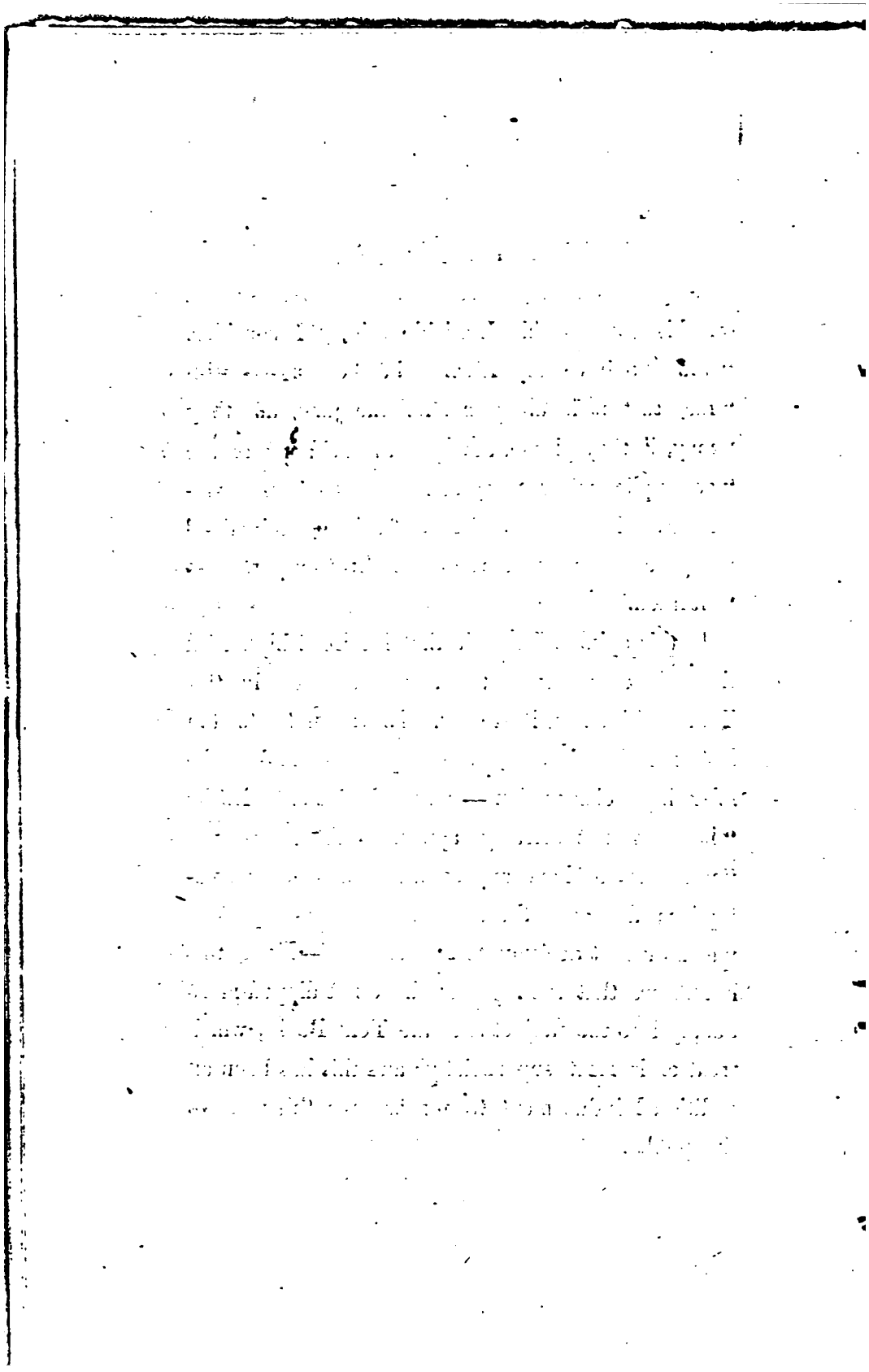
ever, being the only one exclusively on the subject, it circulated among the profession; and as few take the trouble of investigating subjects on which others have bestowed their time and attention, the opinions of the author of that work appeared to gain ground. It was to correct those believed-to-be erroneous opinions that the present work was undertaken. As it was conceived that in England the practice with respect to the admission of the testimony of accomplices was well understood, and uniformly followed, and that it was in Ireland alone that any uncertainty as to the rule, or diversity of opinion prevailed, this work was intended merely for the latter country; and the object of its author it was thought would be sufficiently attained by submitting the manuscript to the perusal of the then judges, and the heads of the profession; and this having been done, the work was thrown aside as having performed its office. It may be asked, "why then is it now "brought before the public?" To that I answer, that from two cases lately decided on circuit in England, the law upon this subject appears to be set afloat in that country. The cases to which I

allude are Rex *v.* Addis 6 *Car. and Payne,* 388, and Rex *v.* Webb, *Id.* 595. In the former, which was tried before Mr. Justice Patteson, the accomplice was corroborated as to collateral facts only, and the learned judge is reported to have used these words—"The corroboration of an ac- "complice ought to be as to some fact or facts, "the truth or falsehood of which go to prove "or disprove the offence charged against the "prisoner." The evidence of the accomplice was not allowed to go to the jury, and the prisoner was acquitted. Rex *v.* Webb, was tried before Mr. Justice Williams. It was proposed to confirm the accomplice as to the mode in which the felony was committed, when the learned judge observed to the counsel for the prosecution, "you must show something that goes "to bring the matter home to the prisoners; "proving by other witnesses that the robbery "was committed in the way described by the "accomplice is not such confirmation of him as will "entitle his evidence to credit so as to affect other "persons. Indeed I think it is no confirmation at "all, as every one will give credit to a man who

"avows himself a principal felon, for at least "knowing how the felony was committed. It has "always been my opinion that confirmation of this "kind is of no use whatever."—Now, with all due respect to those two learned judges, it appears to me that they confound two things which are very different, circumstantial evidence against the prisoner, and evidence *merely* corroborative of the accomplice; and that neither of them has adverted to the cases upon this subject, or the opinions and decisions of their predecessors; and therefore that I may do some service to the profession in bringing together the authorities upon a subject of such frequent occurrence in the administration of criminal justice. On the other hand, in the case of Rex *v.* Hastings and Graves, before Lord Denman, assisted by Mr. Justice Park and Mr. Baron Alderson, (7 Car. and P. 152,) when the counsel for the prosecution declared that he could not confirm the testimony of the accomplice as to the particular prisoners charged, yet that he could confirm him as to the general circumstances of the case, and as to the mode in which the robbery had been committed, his Lord-

ship permitted him for that purpose to examine the accomplice, and the several other witnesses; and on this occasion his Lordship said, "I consider, "and I believe my learned brothers agree with "me, that it is altogether for the jury, and they "may, if they please, act upon the evidence of the "accomplice without any confirmation of his state- "ment. But one would not, of course, be inclined "to give any great degree of credit to a person so "situated."

In this opinion I submit that his Lordship stated the rule correctly as the cases collected in this Tract will show it to be. In the note to the last mentioned case, the reporters make the following observation.—"In the Text Books "it does not clearly appear that it is not "necessary to have any confirmation of an accom- "plice; this case, therefore, seems to us important "as a distinct decision to that extent."—From this it appears that the reporters have not dipped more deeply into the subject than the Text Books, which treat of it most superficially: and this has been an additional inducement to me to give this work to the public.



OF THE TESTIMONY OF ACCOMPLICES.

THERE is no question which more frequently occurs in the administration of criminal justice, than that which concerns the testimony of accomplices, and the manner in which their evidence ought to be allowed to go to a jury. If it be important (and none can doubt that it is so) that the testimony of accomplices should be received, it is important that the rules which govern its reception should be rightly understood. Yet there is hardly any question in the law, which seems in this country to have been so little considered, and upon which a greater diversity of opinion prevails. This is the more surprising, as the inquiry presents no peculiar difficulty. There is no intricate problem to be solved; no recondite principle to be explored and extracted; and therefore no peculiar effort of the understanding to be employed. The inquiry is

confined to a mere matter of fact. What is the rule which the judges of England have *thought proper* to adopt to regulate their own discretion in sending to a jury the evidence of an accomplice? This simple fact is to be ascertained by an examination of a few cases, covering no great space of time, in which the rule has been laid down and acted upon. Yet in Ireland the subject is treated as if it were *res integra;* and each person exercises his understanding in inquiring, not what the rule is, but what it ought to be. Amid the confusion which this occasions, there are still some things which are sufficiently clear, and about which all are agreed. An accomplice is a competent witness; the objection arising from the character in which he appears, goes only to his credit with the jury. A verdict founded on his single testimony, is a legal verdict. But judges considering the light in which he appears, have in modern times been in the habit of recommending it to the jury not to found a verdict upon his testimony, unless that testimony has received some corroboration. Still, however, that is a mere matter of practice, voluntarily adopted by the judges, affecting the exercise of their discretion on a subject upon which it is not their province to decide. These points seem to admit of no dispute. But when we come to inquire into the nature and extent of that corroboration which this practice requires, it is there that the controversy begins. At

what time the regulation above alluded to came to be adopted, it is not easy to ascertain. Certain it is that its origin cannot be referred back to any remote period; as a general rule I cannot trace it back as far as half a century.

In the conduct of Lord Holt, it is no where discoverable. I do not find that Lord Hardwicke, when he presided in the King's Bench, had an idea of its existence; and even Lord Mansfield does not seem (at least in the year 1775) to have had a conception either of its existence or its necessity. On the motion in Mrs. Rudd's case he uses these words, "And though accomplices are clearly com-"petent witnesses, their *single testimony alone* is "SELDOM of sufficient weight *with a jury* to convict "the offender." It would appear that shortly after that time, the practice began to prevail of even not sending to the jury to be considered the uncorroborated testimony of an accomplice, for we find it adverted to as a practice by Baron Perrin, in the case of Durham *v.* Crowden 1 Leach 479, who states it, however, to be mere matter of discretion in the judge, and not a rule of law: that is, as I take it, that it was mere matter of discretion in the judge, whether he adopted the practice in any particular case or not. How the practice which at present prevails, could ever have grown into a general regulation, must be matter of

surprise to every person who considers its nature, or inquires into the foundation on which it rests. Why the case of an accomplice should require a particular rule for itself; why it should not, like that of every other witness of whose credit there is an impeachment, be left to the unfettered discretion of the judge, to deal with it as the circumstances of each particular case may require, it seems difficult to explain. Why a fixed unvarying rule should be applied to a subject which admits of such endless variety as the credit of witnesses, seems hardly reconcileable to the principles of reason. But, that a judge should come prepared to reject altogether the testimony of a competent witness as unworthy of credit, before he had even seen that witness; before he had observed his look, his manner, his demeanour; before he had had an opportunity of considering the consistency and probability of his story; before he had known the nature of the crime of which he was to accuse himself, or the temptation which led to it, or the contrition with which it was followed; that a judge, I say, should come prepared beforehand, to advise the jury to reject without consideration such evidence, even though judge and jury should be perfectly convinced of its truth, seems to be a violation of the principles of common sense, the dictates of morality, and the sanctity of a juror's oath. Suppose the jury to whom a judge had given

such a recommendation were to turn upon him and say, "Your Lordship has told us that the witness "is competent, and that we are the exclusive judges "of the credit that is due to him; and the oath "that we have taken binds us to find a true ver- "dict according to the evidence; we have duly "considered the circumstances under which the "witness appears before us; we have examined "his testimony not only with sober caution, but "with the most scrutinizing jealousy, and we "have not a doubt of its truth; does your Lord- "ship persist in recommending us to reject it, in "opposition to our perfect conviction, our con- "sciences, and our oath?" The question would not fail to produce considerable embarrassment to the judge, from which he would in vain endeavour to extricate himself by retiring upon the rule.

Nor, if we inquire into the foundation of the rule, shall we find in it any thing certain or fixed, such as ought to be the basis of an uniform and never-varying rule. We shall be told by one that it is the moral guilt of the witness which produces this, as it were, practical incompetency; whilst another ascribes it to the desire which he has to purchase impunity for his own transgression.—If it be the moral guilt of the witness that affects his credit, the degree to which his credit is affected must de- pend upon and vary with the magnitude of the crime of which each witness confesses himself to be

guilty. Crimes are of every different shade, from the most venial petit larceny to the most atrocious murder. Yet to all the rule equally applies. The witness, who on cross-examination confesses that he has been engaged in many murders, appears more stained with guilt than he who comes forward as an accomplice in the petit larceny then under trial; yet the former is without the scope of the rule, whilst the latter comes entirely within the sphere of its application. The testimony of the same witness may in one trial be absolutely rejected under the operation of the rule, and in the very next trial, in the course of the same day, it may be permitted to go to the jury: yet his moral character has undergone no change in the interval. Moral guilt, then, can never afford any rational foundation for a rule which applies indiscriminately to the highest and the lowest degrees of that guilt.—But an accomplice, we are told, comes forward to save himself, and his credit is affected by the temptation which this holds out to forswear himself. But who is it that establishes his guilt? he himself—he is his own accuser; and the proof, and often the only proof which can be had, of his guilt, comes from his own lips. He is generally admitted as a witness from the necessity of the thing, and from the impossibility without him of bringing any of the offenders to justice. If this be the foundation of the rule, it rests on a shifting sand. The temp-

tation to commit perjury, which influences his credit, must be proportioned to the punishment annexed to the crime of which the witness confesses himself guilty. But the rule applies with equal force to the accomplice who may apprehend but a month's imprisonment for the most trifling petit larceny, and to him who may reasonably dread death for an atrocious murder. Universal and undiscriminating, the rule levels all distinctions. Where then is the necessity for, or good sense in, such a rule? Why not leave the credit of the accomplice to be dealt with by the jury, subject to such observations upon it from the judge as each particular case may suggest? Why depart in this case from the ordinary rules of law, when by doing so we only introduce anomalies and incongruities that depend upon no fixed principle? Let it not be imagined that I contend that the evidence of an accomplice ought to be credited implicitly by a jury; nothing is further from my intention. Such persons "in each particular "instance come sullied with some degree of con- "tamination—*not all, indeed, in equal degree;* "contaminated however in some degree by a par- "ticipation in the very crime they impute to "others."* Their testimony must be subject to observation from the judge, like that of every other

* Lord Ellenborough—Rex v. Despard.

witness whose credit is impeached. But that, subject to such observations, their credit ought to be left with the jury; that persons, whom the interest of the community require, and the principles of sound policy invite to come forward, should not be marked by a rule which has not been deemed necessary in the case of more atrocious offenders not appearing in the character of accomplices, seems to me to be what is required by reason and good sense.

The practice, however, still prevails in England, and whilst it does, it is right to observe it here. I shall therefore proceed to inquire on what footing it stands in England, which the decided cases, in my mind, clearly show. I have already observed that in Ireland the subject has been generally treated and reasoned upon as if it were res integra. As far as I can collect, there are in Ireland three different opinions entertained upon the subject—First, some hold that the corroboration required must go to the criminality or identification of every prisoner on trial accused by the accomplice—Secondly, others hold that though it is not necessary to corroborate the accomplice as to the criminality of every prisoner on trial, where more than one are tried together, yet that corroboration as to some one of the prisoners is absolutely necessary—Lastly, others are of opinion that the points of corroboration are not necessarily confined to the

criminality or identification of any of the prisoners, but that it is enough if the testimony of the accomplice is confirmed "in such and so many material "parts of it, as may reasonably induce the jury to cre- "dit him as to the entire of his narrative, and among "other parts, as to the guilt of the prisoners."*

The first opinion appears plausible, and the arguments in support of it are specious. "If," it is said, "corroboration be at all necessary, the "guilt of the prisoner being the important point of "the case, corroboration as to that must be the "most important, and the most satisfactory. As "to the general details of the transaction, no "corroboration is necessary, nor is corroboration of "weight. There can be no doubt," it is argued, "the accomplice was present, and having been "there, he has, of course, a knowledge of the "circumstances; and confessing his own guilt, he "has no temptation to speak falsely as to them: "corroboration as to those facts, too, is quite con- "sistent with the innocence of the prisoner. An "accomplice is a bad man, and to permit a "conviction on his testimony without additional "evidence in some way going to affect the prisoner, "would deprive innocence of that protection "which we have a right to throw round it, and ex- "pose it to the machinations of the wicked." These

* York Trials passim.

arguments are, as I have said, specious, and are apt to captivate those who do not attentively consider the subject. There is one obvious objection to this opinion, that it goes to restrict the jury in the exercise of their constitutional prerogative; to subject their *belief*, as if it were a creature of the will, to fixed rules which are immutable, although the subject to which they are applied is ever-varying; to reduce the jury from the condition of thinking, judging, discriminating beings, to that of a mere machine. What can be more absurd than to tell the jury that they *must* not *believe;* what more wicked than to direct them to find a verdict against their perfect conviction? And though this objection will apply more or less to the *rule*, whatever shape it may assume, it applies with infinitely *most* force to that construction of it, which confines the *inducement to belief* to one particular thing, in exclusion of all others. It originates also in a misconception as to the nature of the defect in the evidence which is to be supplied. The defect in the evidence is not in its *quantity* but in its *quality*. The witness swearing directly to the prisoner's guilt, that guilt is established if the witness be credible. What, therefore, is required, is to throw something, no matter of what nature, into the opposite scale, which will serve as a counterpoise to the impeachment of the witness's credit arising from the character in which he appears; some-

thing that will improve the *quality* of the proof which has been given by the accomplice; and *that* something may be any anything which induces a rational belief in the mind of the jury that the narrative of the accomplice is in all respects a correct one. Now, if we try the question by what passes in our own minds, we shall find that there may be many things which may contribute to inspire us with a rational confidence in the testimony of an accomplice as well as some corroboration as to that part of the evidence which goes to affect the prisoner. Suppose it should appear that the accomplice had been a young man who had been seduced by bad company and evil example to participate in the crime under trial; that he had since been reformed; that he had abandoned his improper courses; repudiated his wicked companions; had felt extreme contrition for his crime, and had since led a religious and a moral life; would not this contribute to impart a degree of credit to him? But let us take an instance of the confirmatory evidence required by the first opinion, and see how weak it may be, and how perfectly compatible with the innocence of the prisoner. It cannot be contended that the confirmation as to the prisoner must amount actually to circumstantial evidence sufficient of itself to establish his guilt. If there were such circumstantial evidence, the accomplice would not be required; and to require such evidence would be

to hold that the testimony of the accomplice could only be used where it was not necessary. All that can be insisted on is, that some evidence should be given *aliundé* which might make it somewhat more probable that the story of the accomplice, where it affected the prisoner, was true. Let us suppose that the crime with which the prisoner stood charged was a robbery, and that a witness came up and swore that the robbery was committed by the prisoner and himself. If then another witness should be produced, who should swear that he saw the former witness and the prisoner together on the evening of the robbery within a practicable distance of the place where the robbery was committed, there can be no doubt but that this would be corroborative evidence within the first opinion. And yet how perfectly compatible is this with the entire innocence of both, and with the utter falsehood of the first witness's testimony! Let us compare this with the effect on our own minds produced by a perfect confirmation in all the minute details of a long and complicated transaction. Nor let us imagine that the witness who comes forward to accuse others, and for that purpose to criminate himself, is necessarily the accomplice he represents himself to be. Many instances of the contrary have occurred within my own experience; and therefore I have always thought it a most important point to ascertain that the witness was himself present. The correct and

accurate manner in which an accomplice details the circumstances of the transaction shows that he was cool and collected, that he possessed observation, that his recollection is fresh, that he was an observer, not an inventor of facts and incidents; and if we find that in every point in which the evidence of other witnesses can be brought into contact with his, they fit into one another and correspond exactly, it is good ground for presuming that his entire narrative is correct. Still further, by establishing him to be that accomplice of accurate observation and distinct recollection of circumstances, you establish another most important point, viz. that he had the means of knowing and that he must have known the persons engaged with him in the transaction. You thus rid the case of all doubt arising from the possibility of mistake as to the person of the prisoner; a doubt which so often hangs over the testimony of unimpeachable witnesses. Having thus established his actual knowledge of the persons engaged in the transaction, you reduce the case to the single point of the possibility of his knowingly and wilfully accusing innocent persons. But *cui bono* accuse innocent persons? If his coming forward originates in contrition, it cannot be supposed; if, as is usual, it originates in the hope of advantage, why should he accuse innocent persons, when he has the guilty ready to his hand? Why expose himself to detection; to a

forfeiture of every expected advantage, and to punishment, by the invention of a falsehood in a particular part of that story, in every other part of which he has been so scrupulously exact, when the truth lies open to him without risk of contradiction or of loss? But, it may be said, he may accuse an innocent man to save a guilty friend. But friendship is not the bond which unites associates in crime; and the accomplice who avows his own guilt, will not feel much disposition to conceal that of his associate: at least he will not incur any risk on his account. In my experience I have ever found it so; the utmost favor that I have ever known an accomplice to show to any of his companions having been to assign to him a less prominent part in the transaction, and to make him comparatively better, by making him less active, than the others. These considerations have, with me at least, great weight; and therefore, though I by no means say the case is impossible, I will venture to assert that it much more rarely happens that an accomplice accuses an innocent man through malice, than that an unimpeachable witness accuses an innocent man through mistake. Nor is it necessary for the protection of innocence to require corroboration as to the identity or guilt of the prisoner. Innocence will have in this case the same protection, which the law affords it in every other, against the machinations of wicked men. A malicious accuser,

who does not appear in the character of an accomplice, may depose to a single isolated fact, from whence the guilt of the prisoner must be necessarily inferred; and he is not expected to know more: whilst the accomplice, who must be supposed to know the whole details, is expected to relate them, and is thus exposed to detection in a variety of ways. There is, therefore, less necessity for breaking the general uniformity, and destroying the harmony of the rules of law, in this case, than in the other. Corroboration of an accomplice as to all the prisoners, when there is a number on trial, is not to be expected, and can hardly ever be had. To require it would be to deprive the community of a species of evidence which its best interests require to be received. Whilst, therefore, it is the duty of the judge to watch with jealous care over the safety of innocence, it is no less incumbent on him to guard the interests of the public, which would be deeply affected by any difficulties thrown in the way of the evidence of an accomplice, amounting to a practical disqualification. But there is one still more powerful objection to that opinion which requires corroboration as to all the prisoners. The question we are discussing is, as I have said, a question of practice, not of theory; of what has been done, not what ought to be done. Those, therefore, who maintain that corroboration in that part of the accomplice's narrative which inculpates

all the prisoners is absolutely necessary, and exclusively sufficient to confirm an accomplice, ought to cite some authority for the proposition. They ought to be able to name some English judge who has distinctly laid down the rule so; who, in directing the attention of the jury to the evidence of an accomplice, has advised them to require such confirmation of him, and has distinctly and in terms informed them that corroboration as to the guilt of all the prisoners, was the only corroboration which ought to be received or listened to. The judge, who, conceiving the rule to be so, omitted to explain it so to the jury, violated his duty, and misled, instead of directing them. Now, no such case has ever been adduced. I believe firmly no such case can be adduced. Certain I am that no such case has existed for the last thirty-seven years at least. I will venture to assert that no English judge ever stated that species of confirmation to be necessary. I will go further, and say, that in cases where they have been called on to state the rule, they have studiously and carefully avoided so restricting it. I will go further, and assert, that, to every common understanding, they have distinctly laid down the contrary; I will go still further, and say, that in pointing out to the jury the circumstances of corroboration, they have directed the attention of the jury to circumstances which in themselves could have not the least possible direct bearing on the guilt of the

prisoner, and which could only be material as they tended to confirm the general narrative of the accomplice; and lastly, I will even show that in some instances some of the soundest and most prudent judges that ever sat on the English bench, take a marked distinction between *confirmatory* evidence and *circumstantial* evidence against the prisoner. In fact, they are not the same; for though all circumstantial evidence against the prisoner is also confirmatory of the accomplice, the converse does not hold: the former goes directly and immediately to affect the prisoner, and, if sufficiently full, would, of itself, sustain his conviction; the latter only affects him *mediately*, through the medium of the accomplice, whose testimony it confirms.

I now proceed to consider the second opinion mentioned before, viz. that "Though confirmation as to all the prisoners where there are more than one on trial is not necessary, yet it is necessary that the accomplice should be confirmed as to one of them." It is manifest that this opinion, if it be sustained at all, can only be sustained by the force of authority coercing our reason; for upon no principle of reason or common sense can it rest. Either corroboration as to the guilt of the prisoners is, or is not, necessary. If it be necessary as to one, it must be necessary as to all. If it be necessary in order to make out a case against a prisoner, there is no case made out against any prisoner with

respect to whom there is no corroboration. To say that corroboration as to the prisoner is necessary, and yet to hold that A, may properly be convicted, as to whom there is no corroboration, (or, in other words as to whom there is not a case made out) because there is corroboration as to B. tried with him, is to say that one man may be properly convicted on evidence not affecting him, but affecting another. Thus, if several are charged with a crime on the evidence of an accomplice, there being corroborative evidence as to one of them only, it will depend upon whether they are tried separately or together, whether more than one can be convicted. If the prisoners are tried together, they will all be convicted, and may be hanged; but if they refuse to join in their challenges, and are therefore tried separately, they will all but one escape. In such case it would be the duty of the judge, as counsel for the prisoners, to direct that they should not join in their challenges, and that in all cases prisoners should be tried separately; and any judge who should omit to do so would take an advantage of the ignorance of prisoners to deprive them of a just and legal defence. Nor is there a single authority in the books in favor of this opinion. No judge has ever laid down the rule so, or even hinted at its being the rule. There are indeed several cases which decide that confirmation as to one of several prisoners is *sufficient*, and that confirmation as to each

of them cannot be expected, and is not required. But there is no case in which it is laid down, or from which it can be fairly collected, that confirmation as to some one of them is *necessary*. Those cases last alluded to, can be sustained only upon the ground of the rule being as stated in the third opinion I have mentioned, viz. that "confirmation in *some* material part of the evidence of the accomplice is sufficient; without tying it down to any material part in particular." Upon no other ground can they be sustained. The guilt of any of the prisoners is a material part of the evidence of the accomplice, and therefore confirmation as to it accredits his whole story. These cases which decide that where several prisoners are tried together, it is not necessary to corroborate the accomplice as to each, but that corroboration as to any of them is a sufficient confirmation of his credit to entitle him to be believed as to the others, appeared to me to go so directly to contradict that opinion which holds that corroboration as to the guilt of the prisoner is necessary, that I thought it impossible for any one to maintain that opinion without questioning the propriety of those decisions. But I was mistaken. A pamphlet has fallen into my hands, published in Dublin a few months ago, the author of which strenuously maintains that opinion, and at the same time admits those cases to be law. The anonymous author, in an advertisement prefixed to the work,

bespeaks the indulgence of the profession, to "a *hasty* and *imperfect* publication," which he says he was anxious should appear before the approaching circuits. As the work, therefore, was intended to instruct our judges on this important part of their duty, the motive for its publication was a most laudable one. At the same time, it is to be regretted that the author, who is capable of better things, had not consulted some friend on the occasion, who would probably have advised him to suffer another circuit to pass by, even at the hazard of whatever mischief the want of that information he so laudably wished to impart, might occasion. He would thus have had an opportunity of reconsidering his work, and possibly have avoided some of the many errors into which his haste to publish has led him. He would have reflected that though Lord Chief Baron Comyns is never more respected than when he cites no authority, an anonymous writer cannot reasonably look for equal respect; and that he requires to be corroborated, like the accomplice of whom he writes. He would have been led to a more accurate statement of the cases which he cites. What can be more contradictory than the following reasoning? "The narrative of the accomplice "becomes credible in as far as it is corroborated; "but for any thing beyond the corroboration, the "narrator continues as unworthy of credit as ever." And secondly, the following—"The corroboration

"in *some particulars* is quite sufficient to warrant "the *general* truth and consistency of the narra- "tive upon this ground, that the agreement between "the story of the accomplice and those particulars "by which it is corroborated, raises a fair presump- "tion that if evidence of further particulars could "be procured, a like agreement would be found to "exist." p. 15. What can be more incomprehensible than the distinction between giving credit to the *testimony* of the accomplice, and giving credit to *himself*. To believe the *story* told, and yet not to believe the *story-teller* whilst he tells it, is an act of the mind which few can perform. Nor is it of any consequence to which the credit is given, the effect to the prisoner is the same; in either case he must be convicted. What can be more unintelligible than a "*discretionary* rule," which is "coercive," or this—"discretion admits of no change or variation." As to the credit due to accomplices, listen to the author. "I take it to be *clear* "that an accomplice is in himself *utterly undeserv-* "*ing of credit.* His *guilt* renders him *unworthy of belief upon his oath* in a court of justice." This proposition is the foundation on which all the author's reasoning is built. It contradicts everything that has ever been laid down by any judge. If he is utterly undeserving of credit—if his guilt renders him unworthy of belief on his oath in a court of justice—why permit him to be examined at all?

How can we found any presumption upon his testimony when it is only "confirmed in some particu-"lars, that if evidence of further particulars could "be procured, a like agreement would be found to "exist." But listen to Lord Ellenborough's opinion upon this point, given in the case of the King *v.* Despard, a case cited by this author, who however studiously steers clear of everything that falls from Lord Ellenborough on this subject. "If "an accomplice were a person who stood under "such circumstances as to be *wholly unworthy of* "*credit*, it would have been a dereliction of duty "on the part of us, the judges, who now sit here; "it would have been a gross dereliction of duty in "those, who have, on former occasions, occupied "similar seats in other courts of criminal justice, "when witnesses of the same description have "been called before them, not to repel such "witnesses at once from the book on which they "were about to be sworn, and to tell the country that "they ought not to be received; but they are, and "always have been received."

I have given these specimens of the style of reasoning on which the author has founded that opinion which he has given to the public, because as I conceive that opinion to be wholly destitute of support from authority, its merit can only be appreciated by considering the sort of reasoning by which it is sustained. I must add an observation on

the manner in which he deals with those cases which decide that corroboration as to any of the prisoners where there are several on trial, is a sufficient confirmation of the accomplice. A single word is sufficient to put them out of the way. He gives them a name, he calls them "exceptions to the rule." This at once gets rid of all trouble of either disputing their existence, or questioning their propriety. It is true, the judges who decided those cases, did not venture so to call them; nor did they even recoguize "the rule" of which they are said to form an exception. But the author is not satisfied with rendering those decisions to which I have alluded harmless by calling them exceptions; he turns them to account; for, having *called* them exceptions, he immediately applies the maxim "the exception proves the rule." Still further, he argues in favor of the propriety of these decisions. His reasoning on this subject is at least as singular as it is ingenious. Having asserted that corroboration as to the guilt of the prisoner is necessary "for the protection of "innocence and life;" that "an accomplice is, and "must always remain utterly unworthy of credit;" that "his narrative is only credible as far as it is "corroborated," and that for any thing beyond the corroboration the narrative "is as unworthy of "credit as ever;" that anything but corroboration as to the prisoner "*affords no foundation whatever*

"*for believing the guilt of the accused*;" and having thus established that as to such of the prisoners with respect to whom there is no corroboration, "*there is* "*no foundation for believing them guilty*," and consequently that they must clearly be taken to be innocent; he proceeds thus—"The jury," he says, "must either entirely believe or entirely disbelieve "the accomplice. When, therefore, corroborative "evidence is given as to one and not as to the "others, the jury are reduced to a sort of dilemma: "they must either acquit the prisoner, whose guilt "is proved to demonstration by the corroborative "evidence, or, finding him guilty, they must find "guilty also the others against whom there is no "corroborative evidence," (and who must therefore upon his own principles be taken to be clearly innocent.) "This latter course," he adds, "when "all consequences are considered, will *probably be* "*seen to be* the least *objectionable* one."—That is, if ten are tried together, as to one of whom only there is corroborative evidence, only one of whom therefore is proved to be guilty, "the least objectionable course" for the jury is to convict the nine innocent men, rather than acquit the one that is guilty. And this is the illustration of the excellence of that rule, qualified as it is by the exception, which was established in favor of innocence and life! A conviction of this nature is what the author calls "a *safe* conviction."—For

whom it is safe, I am at a loss to discover.—It is not very safe for the nine innocent men who are hanged without proof—it is not safe for the consciences of the jury who convict—nor is it very safe for the character of the judge who leaves it to the jury to convict upon such grounds. The author's reasoning on the cases is of this nature—"That corroboration is necessary, all are agreed; "now, when several persons have been tried "together, and there is corroboration only as to "one, the language of the court is, that the jury "may, on such corroboration, convict the others "'*against whom there is no corroboration.*' "Here," says he, "the court says that the cor- "roboration *against* one prisoner is no corrobora- "tion *against* the others. If then corroboration "be required, and corroboration *against* one is no "corroboration *against* the others, the accomplice "is uncorroborated as *against* the others." Now, what ought to follow from this if his reasoning be correct and his rule established?—that those prisoners as to whom there is no corroboration ought to be acquitted. But what actually takes place? Why, that the judge leaves it to the jury to convict them. And upon what principle? That although there is no corroboration of that particular part of the accomplice's testimony which implicates some of the prisoners, yet the corroboration which the accomplice has received as to some other

of the prisoners is a sufficient *confirmation of his story* to establish his credit with the jury, and to counterbalance the impeachment of his credit arising from the character in which he appears.

I come now to say a few words on the third opinion to which I have alluded, viz. that "the corroboration must be as to such and so many "parts of the accomplice's evidence, without regard "to what those parts may be, as may reasonably "induce the jury to believe that, bad as he is, he is "telling the truth." This opinion has obviously some things to recommend it which the other two do not possess. It approaches more nearly to what the rule of law is in all other cases, that is, it comes more nearly to leaving the credit of the witness to the jury, subject to such observations as the judge may think the particular case requires, and what the twelve judges in Rex *v.* Atwood (post) declared, was the rule in the case of accomplices also. It has another advantage; it reconciles all the cases, which are not otherwise to be reconciled; it requires no "exception" as general as the rule itself; it sustains the characters, and justifies the conduct of the judges before whom accomplices have come, and whose conduct must have been highly culpable if any such rule existed as the first opinion maintains. But I have already, in discussing the first opinion, answered some of the objections to the species of corroboration

which this third opinion admits of. I shall, therefore pass on to a consideration of the cases. I have given more time to the anonymous pamphlet than I at first intended. I am not sorry that I have done so, as it is the only publication which has appeared exclusively upon this subject; and men in general are so little disposed to take trouble, that they willingly receive without examination whatever comes from one who has devoted his time and attention to the subject, and thus text writers acquire a degree of credit and authority which the intrinsic merit of their works by no means entitles them to. I feel it right therefore to follow the author alluded to, through his statement of the cases upon this subject, in which he has evinced more than ordinary incorrectness. In considering this subject he appears unfortunately to have begun at the wrong end. Like most theorists who form an hypothesis and then cast about for facts to support it, the author, instead of first looking into the cases and fairly extracting the rule from *them*, exercises his own judgment upon the question, forms his opinion upon it, and with a mind so prepared proceeds to look for cases by which, not the rule may be ascertained, but his own opinion may be supported. The consequence of this is, as might naturally be expected, that the cases are not correctly stated.

I shall now proceed to consider the cases; and as

I have dwelt so much upon the reasoning of the anonymous writer to whom I have alluded, and have ascribed to him incorrectness in the statement of the cases, I shall follow him in the consideration of them. Having declared that judges "*very early*" adopted the rule for which he contends, and which he says is established by "the united wisdom of ages," he is obliged necessarily to go pretty far back in search of its origin. He begins, therefore, as early as the year 1662, above a century before, I conceive, the rule was even thought of. He cites the case of the King *v.* Tonge and others, for high treason;* and how far he has correctly stated that case will appear. He has given an *extract* from the opinion of Sir O. Bridgman, from which he thinks something favourable to his own view may be spelt out. To an objection to two witnesses as not being lawful witnesses, because they were accomplices, he gives part of the answer of Sir O. Bridgman, who states that they are lawful witnesses, and adds—"Besides, they are not witnesses alone; "and *there are divers circumstances concurring.*" The writer then adds, "now, looking into this "case it will appear that the testimony of the "accomplices is most amply corroborated by *cir-* "*cumstantial evidence affecting the prisoner;* and

* State Trials, vol. 2, p. 488. Cobbett's State Trials, vol. 6, p. 226.

"this forms, therefore, the concurring circum-"stances which are *referred* to by the Chief Justice "*as supporting the accomplices.*" And in page 17, he says that "these circumstances, we *have* "*seen*, were INDEPENDENT circumstantial evi-"dence." Now, even if this had been true, that there was "independent circumstantial evidence," it does not appear that the Chief Justice "*referred to it as supporting the accomplices.*" I have read the case attentively, and I venture to assert, that there is no allusion, either by the Bench or the Bar, to the necessity of any confirmation to an accomplice. Nor are those circumstances referred to for any such purpose. And I go further and say, that in addition to the testimony of the four witnesses who all swore *directly* to Tonge's guilt, there was not a particle of merely corroborative evidence, as contradistinguished to direct evidence against the prisoner Tonge, to whose objections the Chief Justice was giving an answer, and to whose case alone the "concurring circumstances" applied, all the evidence against him going directly to prove his guilt. The four witnesses against Tonge (for there were not four against the other) swore to the existence of a conspiracy to murder the King, and that Tonge was present at the meetings of the conspirators, and took a leading part in the transaction; and they *(the same witnesses)* swore to these circumstances, viz. that the meetings of the conspirators were held at Tonge's house, and

that he (Tonge) had applied to Philips, (one of the conspirators) to get the watchword of the Trained Bands; and it will be found that these circumstances, viz. the meetings held at his house, and the application to Philips, were "the circumstances" to which allusion was made, not as confirming the accomplices, but as *direct* evidence of Tonge's guilt, and showing the active and leading part Tonge took on the occasion. The *legal* question discussed was the *competency*, not the *credit*, of the two accomplices in *a case of treason*. The question turned upon the construction of the statutes 1 E. 6, c. 12, and 5 and 6 E. 6, c. 11, which provide that no person shall be convicted of treason except upon the testimony of two "*lawful* witnesses," unless the party shall "willingly without violence confess the same." The question was, whether an accomplice in the treason was a "*lawful* witness," *within those statutes*. The objection was made by Tonge, one of the prisoners, who appears to have been aware of the statutes; for when the Chief Justice adverted (which he did, improperly, as no evidence was given of it) to Tonge's confession, Tonge answered him by stating that it was extorted from him. I shall now give the whole dialogue that passed on the occasion between Chief Justice Bridgman and the prisoner Tonge. "My Lord, as you are my judge, so I hope you "will be my counsellor, and I pray your advice "whether Mr. Tyler and Mr. Riggs be *competent*

"witnesses against me, they being in the same case.
"Sir O. Bridgman—Where is the cause of your
"exception? Tonge—Because they are in the
"same case. Sir O. Bridgman—There are four
"witnesses all against you; your own confession
"and examination against you; through the whole
"business *you are a principal person.* Tonge—I
"confess I did confess it in the Tower, being threat-
"ened with the rack. Sir O. Bridgman—There
"is Mr. Hill, Mr. Riggs, Mr. Bradley, and Mr.
"Tyler: there is Hill and Bradley without exception.
"Bradley, he was not at all concerned; he went
"along with you to know what you said; and Mr.
"Hill was not in person in the design, but made use
"of only to find out the plot: they did nothing un-
"justifiable, so they are witnesses without exception.
"Sergeant Glynn—We desire your Lordship to
"declare whether Riggs and Tyler be lawful wit-
"nesses. Sir O. Bridgman—I would have you to
"know this: where you make exception against
"those persons that are guilty of the same crime,
"that's a mistake to say they are not witnesses;
"in cases of treason, where there are works of
"darkness, these are things men will not do by day-
"light, but in darkness; and who can discover these
"deeds of darkness better than they that have to do
"with them, if God turn their hearts. It's true,
"such persons as these are, if they had been con-
"victed, they are not witnesses; but though they

"are in the same fault, it is frequent practice they "are allowed in case of felony. Besides, they are "not witnesses alone, and *there are divers circum-* "*stances concurring*. 1 E. 6.—5 E. 6. both statutes "say there shall be lawful witnesses in cases of high "treason; but that is, such witnesses as the law "would allow before those statutes. The meaning of "the statutes was, that men might not be taken by "surmises; therefore the law says there shall be "two witnesses. When one is accused of treason, "another in the same offence unconvicted, his evi- "dence is made use of; and though he is not so "upright a witness as others, yet he is such a witness "*as the jury is to take notice of.* Such testimony "was allowable before those statutes; and the trial "is still by jury, not witnesses; and *the jury are to* "*consider of the credit of the witnesses.* It is plain, "*by several circumstances,* you have been a principal "person, a leader of the business. Though a man be "but present when treason is spoken, or designed "and acted, if this man be present and shew any "thing of approbation, his concealing it is as much "treason as he that did it; they are all principals in "treason." I have thus given the entire dialogue, word for word. There is not another word on the subject of accomplices, either from Sir O. Bridgman, or the counsel for the prosecution, or the Chief Justice, Sir Robert Forster, who charged the jury. Immediately upon Sir O. Bridgman's concluding

what I have given above, Sir Heneage Finch proceeds to sum up for the prosecution, and addressing the jury, says, "If you consider first Tonge, there "are against him four witnesses, and those unques- "tionable, as you have heard the direction of the "court:" and he then proceeds to state what those witnesses have proved against Tonge, and having enumerated several parts of it, he adds, "with a "world of other evidence, how *active he has been;* "his house was the place of consultation; he im- "parted his design to Philips, and Philips undertakes "to get the word of the Trained Bands." He then proceeds to state the evidence against the other prisoners, and then recapitulates: "Then there are "these before you, four witnesses against Tonge; "two against Philips, and his own confession. Here "are two against Gibbs, with these circumstances. "'If you be honest men, this is the news, &c.'" (alluding to an expression of Gibbs, proved by one of the witnesses, who spoke directly to his guilt.) "Here are two witnesses likewise against Stubbs," &c. Sir Robert Forster then proceeds to charge the jury: "For the witnesses, they are none but "such as may satisfy all honest men. Two of the "witnesses are without exception; but I do not "see any way but their testimony is good. "Go together."

I have thus given the entire of what passed on the occasion alluded to. I think it perfectly

clear that the author of the pamphlet did not understand the meaning of the terms he uses; and that he confounds two things that are essentially different; viz. circumstantial evidence, and evidence of the circumstances of a transaction. By the former, guilt is established, not by direct proof of that guilt, but by *inference* from the facts proved; in the latter, the proof of the facts directly establishes the guilt. In the former, the facts deposed to may be implictly believed, and yet the mind may not be led by them to the *inference* that the prisoner is guilty. But, in the latter, if the circumstances deposed to be believed, the belief of the prisoner's guilt necessarily and irresistibly follows. Thus, if a prisoner is indicted for murder, no evidence may be given by any one present at the murder, that the prisoner was concerned in it; but facts and circumstances may be deposed to, which may (or may not) afford ground to believe that he was engaged in it. *That* is *circumstantial* evidence. On the other hand, a witness may depose that he saw the murder committed, and that the prisoner was actively engaged in it, and he may go on and detail the circumstances of it, and the part the prisoner took on the occasion. That is not circumstantial evidence; but it is evidence of the circumstances of the transaction. Now, that is the sense in which Sir O. Bridgeman uses the words,

"circumstances concurring." He says to Tonge, "through the whole business you are a principal "person." And again, towards the conclusion he says, "it is plain by several circumstances you "have been a principal person, a leader in the "business." Besides, those circumstances were deposed to by the accomplices themselves; and it is the first time I ever heard that an accomplice can *corroborate himself*, by the circumstances which he swears to.

The next authority which the writer alluded to cites, is that of Lord Hale; and here also he misleads his reader by giving a garbled extract, instead of the entire of what Lord Hale says upon the subject upon which he was speaking. "The "case of Tonge," says the anonymous writer, "was afterwards discussed on other points by the "twelve judges, among whom was the Chief "Baron Hale. It is reported by him in his Pleas "of the Crown, together with other decisions on "the same point, and then he (Lord Hale) "observes—"And yet though such a party be "admissible as a witness in law, yet the credibility "of his testimony is to be left to the jury; and "truly it would be hard to take away the life of "any person upon such a witness, that *swears to* "*save his own*, and yet confesseth himself guilty "of so great a crime, unless there be also very "considerable circumstances, which may give

" greater weight to what he swears." " Referring," the writer adds, " to the case of Tonge then, it is " not too much to *infer*, that the very *considerable* " *circumstances* contemplated by Lord Hale, were " of the same nature as those *concurring circum-* " *stances dwelt* upon by Sir O. Bridgman, in the " case then before him; and these, *we have seen*, " were *independent circumstantial evidence.*" Now, with all respect to the author, it is quite too much to make any such inference; because we have not seen, and nobody can see, that the circumstances *slightly mentioned*, not " *dwelt upon*," by Sir O. Bridgeman, were "independent circum- " stantial evidence," for there was no independent *circumstantial* evidence, as contradistinguished to *direct* evidence, in the case; the entire evidence going *directly* and immediately, and not *circumstantially*, to *prove* Tonge's guilt. In the next place, if the writer had fully and fairly given what Lord Hale says on the subject, it would have appeared, that Lord Hale was not speaking of accomplices *in general*, but only of accomplices who came forward under the peculiar circumstances he had before mentioned, *which did not exist in Tonge's case;* and the passage from Lord Hale, when rightly understood, rather makes against the necessity of corroboration in the case of accomplices in general. If we look to the preceding page in the Pleas of the Crown, in which the points reserved for the

judges in Tonge's case are stated, we shall find that the last of them related to Riggs the accomplice. 1 H.P.C. 304. I will give the point in Lord Hale's words—"2. The King having promised a "pardon to Riggs, if he would discover the plot, "he performed that part by his discovery; and "this was held by *all* no impediment to his "testimony, for the promise was not applied to "*witnessing* against any other; but two justices "held, that if the King promised a pardon upon "condition that he would *witness* against any others, "and that being acknowledged by Riggs, when "he took upon him to give evidence, &c. that will "make him incapable to give evidence, because HE "SWEARS FOR HIMSELF; but in *this point* the "greater number were of a contrary opinion, ex "libro Bridgman verbatim, and I remember the "consultation and resolution accordingly. And "ACCORDINGLY, at the session of Newgate, 1672, "Mary Price was convicted of treason, &c. by the "testimony of those that were *participes criminis*, "&c. The like conviction was in the same year "of Hyde and others of robbery on the highway, "by one that was party in the robbery, but not "indicted. But in *these* and the *like* cases, 1st. "The party that is the witness is never indicted, "because that doth much weaken and disparage his "testimony, but possibly not wholly take away his "testimony. 2dly. And yet though *such* a party

"be admissible as a witness in law, yet the *cre-*
"*dibility of his testimony is to be left to the jury;*
"and truly, it would be hard to take away the life
"of any person upon *such* a witness, *that swears*
"*to save his own*, and yet confesseth himself guilty
"of so great a crime, unless there be also very
"considerable circumstances, which may give *the*
"*greater credit to what* he swears." Now, it is impossible to read this, and not to see that Lord Hale is speaking, not of the actual case of Riggs, the witness in Tonge's case, whom *all* the judges agreed to be competent, but of what would have been the law, if the promise of pardon to Riggs had been on condition of his *witnessing* against others. Two of the judges held that he would have been incompetent, and one of those two *was Lord Hale* himself. His ground for holding a witness under *such circumstances* incompetent was, that *such a* witness *swore for himself.* It is clear that he did not apply that reason to all accomplices, but as distinguishing the situation of such an accomplice from that of Riggs, who did not receive a promise of pardon on condition of *witnessing*. Had he considered it as applicable to all accomplices, he would have held all incompetent. He proceeds to mention the resolution of the majority, that even in *such case*, the witness would be competent, and then gives two instances of conviction *according to that* resolution. He then makes ob-

servations on "*those*, and *the like* cases," that is, not on the cases of accomplices in general, but of those who come forward under circumstances which in his opinion made them incompetent. 1st. They are never indicted, for that would weaken their testimony; as undoubtedly it would. If the witness being actually indicted, that is, proceedings having actually been commenced against him, receive a promise of pardon on condition of witnessing against others, the prosecution actually commenced against himself would weaken his testimony. 2dly. Though *such* a party be admissible as a witness in law; that is, though in strict law the majority of the judges have thought him admissible, yet *such* a witness, that "*swears to save his life*," or, as he before expressed it, that "swears for himself," though he is not, as he (Lord Hale) thought he was, absolutely incompetent, at least requires considerable confirmation. This is Lord Hale's meaning, which by the writer alluded to has been perverted into an observation on all accomplices, with a particular allusion to the "independent cir-
"cumstantial evidence against the prisoner," which that writer would have his reader believe existed in Tonge's case. I think I may safely say that up to this period of his research the writer has found nothing to induce any body to think that there then existed "a rule *coercive* on the *dis-*
"*cretion* of the judge," to reject the testimony of an accomplice unless he is corroborated as to the

guilt of the prisoner. The writer then proceeds— "From this period (1662) I pass over a long "interval, during which I find nothing in the books "deserving of attention on the subject of corrobo- "ration, and I come to the case of the King *v.* "Atwood and Robins in 1787." Thus then "the "*united wisdom of ages*" is reduced at once to a period of the last 37 years! Now, with all proper respect for the author's research, he *might* have found in that interval, and indeed he could not have *read* attentively the case of the King *v.* Despard which he cites, without being led to find an important case on the subject of corroboration, because it is referred to in no less than four places in the King *v.* Despard;* twice by the Solicitor-General, and twice by Lord Ellenborough. I mean the case of the King *v.* Charnoch, King and Keyes, before Lord Holt.† As to which case Lord Ellenborough says, that "what was there said by Lord Holt "comprises in a few words the *good sense and the* "*law* upon this subject." How the author of the pamphlet came to pass that case by, would require some explanation. The author might also have found in the King *v.* Rudd,‡ the expression of Lord Mansfield which I have already mentioned, "the "*single* testimony of an accomplice *alone* is "SELDOM of sufficient *weight* with *a jury* to con-

* 28 Howell's St. Tri. 488.
† 4 St. Tri. 594. S. C. 12 Howell's St. Tri. 1454.
‡ Cowp. 339.

"vict the offender"—an expression which never could have been used if Lord Mansfield conceived that under a *rule* "*coercive* on the *discretion*" of the judge, "the single testimony of an accomplice alone" never could be suffered to go to a jury.

I shall proceed, with the writer alluded to, to the case of the King *v.* Atwood and Robins;* a case which he appears to misconceive as much as he did the case of Tonge, or Lord Hale's observations. The facts of the case of Rex *v.* Atwood and Robins are these. The prosecutor proved that he was robbed by three persons. He detailed all the circumstances of the transaction; but could not identify any of the persons. An accomplice was then called, who deposed, that he and the two prisoners had committed the robbery, and he "*mentioned all the circumstances that passed,* "*which exactly corresponded with those the pro-* "*secutor had before related.*" Impressed no doubt with this coincidence, Mr. Justice Buller, before whom the prisoners were tried, let the case go to the jury without any corroboration of the accomplice as to the identity of the prisoners, who were found guilty. But a practice having begun to prevail of rejecting the uncorroborated testimony of an accomplice, he referred the case to the twelve judges to consider "the *propriety*" of this conviction. That involved the propriety of Mr. Justice

* 1 Leach, C. C. 464.

Buller's conduct in suffering the case to go to the jury. If there existed a rule "coercive on the "discretion of the judge to reject the testimony of "an accomplice if it were uncorroborated as to the "guilt of the prisoner," Mr. Justice Buller, acted improperly in suffering the case to go to the jury. If there was no such rule; or if a rule requiring *corroboration in general* existed, which was satisfied by the exact coincidence between the prosecutor and the accomplice as to the details of the transaction, the verdict was right and Mr. Justice Buller's conduct was proper. Is it to be supposed that the judges, being expressly summoned to consider what was the *proper* course for a judge to pursue under such circumstances, met, but declined *giving any opinion upon the only point referred* to them, but gave their opinion on a point which the merest novice in the profession would have been ashamed to question, namely, the competency of an accomplice, or the "strict" *legality* of a verdict founded on his single testimony. Yet the author of the pamphlet with the book actually before him, represents to his readers that the judges *declined giving any* opinion, except that the conviction was "*strictly* legal." He declares that he considers this case as "an express authority on the point;" that a judge was bound by "a rule coercive on his discretion," to reject the testimony of an accomplice unless corroborated as

to the guilt of the prisoner; not because the judges declared so, for they did not; but because they held that a conviction without any corroboration except by a coincidence in the details of the circumstances was *strictly* legal!! And that the judges were satisfied with the conviction, appears from this, that Mr. Justice Grose, who was one of the judges that met, says, in Jordain *v.* Lashbrook, that the conviction was "holden good." The subject was fully discussed by the judges. Their opinions (in which Mr. Justice Buller tells us they were unanimous, and consequently their opinions must have coincided with his own) were given *upon the manner in which the evidence of an accomplice was to be dealt with by the judge.* And how is that? To reject the evidence of an accomplice who is uncorroborated as to the prisoner? Quite the contrary. But let us take the opinions of the judges from Mr. Justice Buller himself. He declares their opinion to the prisoner, and in doing so it is to be observed that he dwells *with emphasis* on the coincidence between the prosecutor and the accomplice, as to the details of the transaction, which the reporter has marked by printing in italics that observation. He, Mr. J. Buller, declares that "the Judges were "unanimously of opinion that an accomplice alone "is a competent witness; and that if the *jury*, "*weighing the probability of his testimony*, think "him worthy of belief, a conviction supported by

" such testimony *alone* is strictly legal." He then goes on to declare (and coming directly from the meeting of the judges he must be supposed to express the result of their conference) that "the distinction between the "*competency* and the *credit* of a witness " has *long* been *settled.* If a question be made re- " specting his *competency*, the decision of that question " is the exclusive province of the judge; but if the " ground of the objection go to his *credit* only, his " testimony MUST BE RECEIVED, and *left with the* JURY, " under such directions and observations from the court " *as the* CIRCUMSTANCES OF THE CASE *may require*, to " say whether THEY think it *sufficiently credible* to " guide their decision on the case." Here then we have the rule distinctly laid down upon the authority of the twelve judges, as the only rule existing in the year 1787; a rule which is conformable to the general principles of evidence; which prevails in all cases where the objection goes to the credit of the witness; and which does not distinguish the case of an accomplice as requiring or admitting of any peculiar rule for itself; still less so absurd a rule as one that requires an "exception" more general sometimes even than the rule itself. Yet this decision of the twelve judges, that the testimony of an accomplice MUST be RECEIVED, the author so often alluded to considers an authority directly in the point to shew that it must be *rejected;* and where the judges have said that the evidence must be left *with* the *jury*,

under such *directions* and observations from the judge as *the circumstances of the case* may require, the author asserts that that is a direct decision that it must never go to the jury at all; and that the judge, without making any observation on the evidence, is *in all cases, however different*, to reject absolutely the evidence, unless it is accompanied by other evidence of a particular description!! Throughout the whole of the judgment, as delivered by Mr. Justice Buller, there is not a single hint of any dissatisfaction having been expressed by any of the judges at his having suffered the case to go to the jury, or at their verdict. That none such was expressed by any of the judges, is clear from what fell from Mr. Justice Buller. Whatever sentiment any one of them entertained, they all felt; for they were unanimous, and therefore his opinion was their's. But we have evidence aliundé that the judges were satisfied with the conduct of Mr. J. Buller, in leaving the case to the jury on the coincidence as to the details between the prosecutor and the accomplice; for, in the very same term in which the judges gave their opinions, the case of Rex *v.* Durham and Crowder* occurred before Mr. Baron Perryn, who was one of the judges that met on the case of Rex *v.* Atwood, and who was consequently acquainted with their sentiments. In that case Mr. Baron Perryn followed precisely the same course as had been pursued by Mr. J. Buller, and he suffered

* 2 Leach, Cr. Ca. 538.

the case to go to the jury on the evidence of a witness, who, it was contended, was an accomplice, without any other evidence *going to the guilt of the prisoners;* which it is clear he would not have done if the judges had expressed their dissatisfaction at the conduct pursued in Atwood's case. Mr. Baron Perryn declares that the judges were unanimously of opinion "that the *practice* of rejecting an "unsupported accomplice was rather a matter of "*discretion* with the court than a rule of law." Still further, Mr. Justice Grose, another of the judges who met on the case of Rex *v.* Atwood, cites that case with approbation in Jordaine *v.* Lashbrooke, 7 T. R. 609 (A.D. 1798.) Speaking of accomplices, he says, "This class of men the policy of the law "invites to disclose all they know, *leaving their* "*credit to the wisdom and discretion of a jury.* "In the case of the King *v.* Atwood and Robins, "the prisoners were convicted on the testimony of "an accomplice, unconfirmed by any other witness "*as to their identity;* and the conviction was afterwards *holden good* by the judges." Now, it is impossible that the twelve judges could hold a conviction "*good,*" which was had in violation of a "coercive rule—a rule established in favour of "innocence and life, and which could not be abandoned without danger to both—a rule which flowed "from the sound principles of evidence; which, if "the *united wisdom of ages* be not deceived, is a "sound and necessary one, and cannot be abandoned

"without the abandonment of the good sense by "by which it was established." It is impossible not to remark Mr. Justice Grose's precision in speaking of the corroboration in Rex *v.* Atwood. He does not say that there was no confirmation of the accomplice, but that there was no confirmation "*as to the identity of the prisoners.*"

We have now got down to the year 1798, without a single instance having been adduced by the writer alluded to, of any judge having ever hinted at the necessity, as a general rule, of corroboration, as to the *identity* or *guilt* of the prisoner; or any case mentioned in which the judge acted upon the existence of such a rule. Many cases may have occurred, and must occur every day, in which the judge may have treated a *particular witness*, whether accomplice or not, as one who ought not to be listened to; but as a general "coercive rule," that an accomplice, merely because he is an accomplice, is to be *rejected*, unless confirmed as to the guilt or identity of the prisoner, there has been adduced no instance of any judge either declaring it, or acting upon it.

Following this author, I proceed to the case of the King *v.* Despard, in 1803.* He, from that case, extracts some observations made by the Attorney-General (Percival) on the testimony of accomplices, and he confines himself to these observations, overlooking the observations of the Solicitor-General

* 28 Howell's State Trials, 488.

(Lord Manners) on the same subject, and declaring that the judges did not dissent from what was laid down by the Attorney-General, and that "in the "charge of Lord Ellenborough there is nothing "which bears directly on the present subject. His "Lordship," he observes, "lays down the general "principle, but contents himself with summing up "and observing upon the strength of the corrobo- "rative evidence adduced." Now, if we look to what the Attorney-General stated on the subject, we shall, I think, find in it no assertion that *as to the guilt or identity of the prisoner* corroboration is required. The confirmation, too, of which he speaks amounts to that, not merely which calls upon the judge to let the case go to the jury, but that which leaves "no difficulty in giving *complete* credit to the "testimony" of the accomplice. It is easy to see too, that he adverts to the evidence which he can give in the particular case, viz. the circumstance of Colonel Despard being in company with men of so low a rank in life, which he insists on it, "cannot be "accounted for by any other supposition than that of "the truth of the story." But what are his words: "The confirmation that is required for an accomplice, "is to shew that *the story as related* by him, coin- "cides with *other circumstances*, which are by "unexceptionable testimony proved to have existed; "and when such circumstances, falling in with the "testimony of the accomplice, cannot *so easily* be

" accounted for by any other supposition than that " of the *truth of the story*—when, I say, that is the " state of the evidence, I apprehend the accomplice " is sufficiently confirmed, and that there can be " no difficulty in giving *complete credit* to his " testimony." Now, in all this, I do not find that the " circumstances proved by unexceptionable tes- " timony" are to be circumstantial evidence of the guilt or identity of the prisoner, but that they are to be circumstances going to satisfy the jury of "*the* " *truth of the story.*" What the circumstances are which are to have that effect, or their nature, he leaves very properly at large. I shall now state what was said by the Solicitor-General, on the subject of accomplices, in his reply. " But," says he, " you are told that you are not to believe this charge, " because it is proved by accomplices. Now, before " I make any observation upon that subject, I think " I cannot stand upon better ground than by stating " the opinion of Lord Chief Justice Holt, whom I have " before quoted; his *doctrine is expressly in point* " *to this case.* I shall state it with great confidence, " as containing the law of that court; and I do it " with greater confidence, because I know from a " recent *instance it has the concurrence of this* " *court.* Lord Chief Justice Holt, in the trial of " Charnoch, King, and Keyes, which was, as I told you, " a trial for high treason, and which case *was proved* " *principally, if not entirely, by accomplices,* when

" the objection was made to the evidence upon that " ground, Lord Holt, in summing up to the jury, " states this, and I beg your attention to it, because " you will find it, in the circumstances, very much " corresponding with some parts of this case; and in " the reasoning applicable to every part of this case; he " expresses himself thus: 'But then there is another " 'thing that is objected against the evidence, and " 'that is as to the fairness and credibility of it, " 'because the witnesses, by their own acknowledg- " 'ment, are involved in the same crime, and there- " 'fore cannot be good witnesses against others. " 'Now, as to that objection, I must tell you first, " 'that witnesses under these circumstances are good " 'legal witnesses, but their credits, AS IN ALL OTHER " 'CASES, are left to your consideration.'" Listen then to Lord Ellenborough: "As to the objection " that the bulk of the evidence given in this case " proceeds from accomplices, it is certainly true that " the evidence in this case rests principally (as in " some cases it does, and must *almost entirely*) upon " the evidence of accomplices. What was said by " Lord Holt in the trial of Charnoch, King, and Keyes, " alluded to by the Solicitor-General, *comprises in* " *a few words* the good sense and the law upon the " subject. 'It is certainly,' says Lord Holt, 'a " 'very hard matter, if not impossible, to discover " 'crimes of this nature, if the accomplices in those " 'crimes shall not be allowed to be good witnesses

" ' against their fellow conspirators.' And in answer " to an objection of the prisoner, that though an " accomplice was a *legal* witness, he was not a *good* " one, Lord Holt adds, ' He is a very good witness " ' if he be a legal witness, but the credit of what he " ' says, *as in all other cases*, must be left to the " ' jury, who are judges of the matter of fact, and of " ' the credibility of witnesses.' In that case, the " three most, and I may say, *almost the only material* " *witnesses*, were all of them principal conspirators " in the treason, and there was *no such confirmatory* " *evidence of persons not concerned in the criminal* " *project* as has been produced upon the present " occasion." So far Lord Ellenborough lays down the law, although the author alluded to so often would have us believe that " there is nothing in his " charge which *bears directly* upon this subject." Lord Ellenborough, in stating to the jury the different manners in which an accomplice may be confirmed, in the commencement of his charge mentions that " *he may be confirmed by the clearness and con-* " *sistency of his own narration ;*" and he does not, either in summing up, or in his charge to the grand jury, ever hint at the necessity of circumstantial evidence against the prisoner to confirm an accomplice. Now, if that were necessary, and were alone and exclusively sufficient to confirm an accomplice, Lord Ellenborough was most culpable in not mentioning it to the jury. But he was still more blame-

able when he directed their attention, which he did, to circumstances related by the accomplices, and confirmed by others, which had *no possible relation to the guilt of the prisoner;* such, for instance, as the following: Emblin, the accomplice, deposed that after Colonel Despard had left the party, some of the others stopped at the bar of the public-house in which they had met, and had some gin and some rum, and that he gave three pence, the change out of a shilling, to the barmaid. Lord Ellenborough observes upon this thus: "This circumstance of "giving the halfpence to the barmaid, as related by "this witness, is a further CONFIRMATION of both "Windsor and Emblin as to the same fact. She "also confirms them as to a person with an umbrella "having left the company before this time." There were also some other circumstances going to shew that the *accomplices were where they had described* themselves to be, at a particular time, which Lord Ellenborough relies on as a matter of confirmation of their testimony. Now, what was all this but misleading the jury, if the rule be as stated by the author of the pamphlet? Lord Ellenborough no less than three times mentions the subject of accomplices—once in his charge to the grand jury, and twice to the petit jury, and he never hints at the necessity of circumstantial evidence against the prisoner. Now, why all this caution in avoiding to state in plain and direct terms a rule which was to

govern the jury in the discharge of their duty, or that was to form the justification of the judge in withholding the case from them, if he were bound to withhold it from them? I go back now to the case so often mentioned in Rex *v.* Despard, viz. Rex *v.* Charnoch, King and Keyes. I have already mentioned the words of Lord Holt on the subject of accomplices, and I need not repeat them: but it is material to shew what sort of corroboration appeared to Lord Holt sufficient, not to satisfy any rule requiring corroboration, (for none such existed in his time,) but to entitle the accomplices to be considered as "*beyond all exception.*" He mentions the account which Pendergrass, one of the accomplices, gave of his discovering the plot to government, (a circumstance no way going to the guilt of the prisoners, and as to which the Earl of Portland and Lord Cuffe had been examined,) and he adds—"and this "does not depend only upon the credit of Pender- "grass, but also upon the testimony of my Lord "Portland and my Lord Cuffe, *who have given you* "*a full account of the manner of it* And Mr. De "La Rue" (another accomplice) "tells you that it "was his design at first, even a year ago, if the "conspiracy had so far proceeded as to be ready to "be put in execution, he would have endeavoured "to have prevented the mischief, by acquainting the "king with it; *and he gives you an account how he* "*revealed it to Brigadier Lewson, and to my*

"*Lord Portland, and after to the king, which is* "*confirmed* by my Lord Portland; *so that these* "*are witnesses beyond all exception.*" Let any person read that case, and the above confirmation, which Lord Holt declares puts the witnesses "beyond all exception;" and let him consider the full adoption of Lord Holt's sentiments by Lord Ellenborough, in the King *v.* Despard, and on the former recent occasion alluded to by the Solicitor-General, and say whether it is possible that the rule could have been as the writer of the pamphlet states it. His total omission of the case before Lord Holt; his selecting from the King *v.* Despard only what was said by the Attorney-General; his passing over in total silence what was stated on this subject by the Solicitor-General; and his dismissing, in the slight manner he has done, what was distinctly, and more than once, laid down by Lord Ellenborough, evince a disposition to look into the cases, rather for the purpose of supporting a favourite opinion, than for the discovery of truth.

The next case that we come to is the King *v.* Jones, a note of the points decided in which is given by Mr. Campbell, 2 Campb. 132; but the case at large is reported in Howell's State Trials, vol. 31. The point decided as to the testimony of accomplices is thus given by Mr. Campbell: "The defendant's "counsel contended that the case on the part of the "crown rested entirely on the evidence of an accom-

" plice, that this witness was not confirmed, and " that therefore the defendant could not be legally " convicted. Lord Ellenborough—*No one can* " *seriously doubt that a conviction is legal, though* " *it proceed upon the evidence of an accomplice* " *only.* Judges, *in their discretion,* will advise a " jury not to believe an accomplice, unless he is " confirmed, or only as far as he is confirmed; but " if he is believed, his testimony is unquestionably " sufficient to establish the facts to which he deposes. " It is allowed that he is a competent witness; and " the consequence is inevitable, that if *credit is* " *given* to his evidence, it *requires no confirmation* " *from another* witness. Within a few years a case " was referred to the twelve judges, where four men " were convicted of a burglary upon the evidence of " an accomplice, who received no confirmation con- " cerning any of the facts which proved the crimi- " nality of one of the prisoners; but the judges " were unanimously of opinion that the conviction, " as to all the four, was legal, and upon that opinion " they all suffered the sentence of the law. *Strange* " *notions* upon this subject have *lately* got abroad, " and I thought it necessary to say so much for the " purpose of correcting them." Now, upon this report of the case some observations naturally present themselves to the mind of the reader. First, that the evidence is in no case to be rejected by the judge. It must go to the jury; and all that the judge

can do is to advise the jury as to the credit to be given to the witness. Secondly, that the sort of advice which he will give on that head rests entirely in his own discretion, on a consideration of the testimony of the witness, his manner and demeanour, and all the circumstances which apply one way or the other to the credit of a witness. He may, in his discretion, (and, consequently, he may not,) advise the jury not to believe the accomplice unless he is confirmed. Or he may, or may not, advise them not to believe the witness, except so far as he is confirmed. What is to confirm him in each particular case, he leaves, (as it must be left, for it depends upon the circumstances of each case,) properly undefined. He had, in the case of the King *v.* Despard, stated that "an accomplice might be confirmed "by the clearness and consistency of his own narra-"tion." The next observation that occurs is, that Lord Ellenborough having cited, as an authority in support of his answer to the objection for want of confirmation, the case of the four men, as to the circumstances affecting one of whom there was no confirmation, must have considered that the case of several prisoners on trial was governed by the same rule as that of a single one, and that it formed no exception; otherwise the authority of what was done, where *four* were on trial, could not be applied to the case of Jones, which was that of a *single prisoner*. And lastly, that what he calls the "strange

notions" had only "got abroad *lately*." I shall now state the report of what fell from Lord Ellenborough, as given in the State Trials. His Lordship says, "An accomplice is a competent witness, or why do "we every day admit such evidence? An accom- "plice when admitted and sworn is *unquestionably* "*a witness on whose solitary evidence a conviction* "*may take place.* But it is the *custom* in courts of "justice, (*in their humanity,*) WHEREVER a witness "stands under ANY *circumstances* of exception as "to his testimony, to tell the jury to disbelieve it, "*either wholly or partially, or* only to believe it as "it is confirmed. I feel it the more necessary to "mention that, because a *misapprehension has gone* "*forth upon that subject.* No longer ago than two "years, four persons, on a deliberate consideration "of their case by the judges, were executed, having "been convicted of burglary on the testimony of "witnesses, the principal of whom was an accom- "plice. There was no confirmation of the main "parts of the case, as it respected one of the defen- "dants; but the accomplice was confirmed as to the "main tenor of his story, as it applied to the rest "of the defendants; and *all the judges thought that* "HE *had* SUFFICIENT *confirmation* AS TO THE "GENERAL SCOPE OF HIS STORY. That person, in "respect of whom there was no confirmation, it was "deliberately recommended, should undergo the "sentence of the law, and he did undergo the

"sentence of the law." Now, upon this report of the case an observation or two will arise: 1st. Lord Ellenborough considers the practice as resting merely on the *humanity* of the judge, and not on any rule of law, or any coercive rule whatsoever. 2ndly. He does not conceive that the principle is peculiar to the case of an accomplice, but common to all cases "where a witness stands under ANY cir- "cumstances of exception as to his testimony;" as indisputably in good sense it ought to be. He tells you that in such cases the direction of the judge to the jury is not to be the same in all cases, as if governed by an unvarying rule to be applied without discrimination to every set of circumstances. The judge may tell the jury either to disbelieve the evidence wholly, or to disbelieve it partially; or he may tell them to believe it only as it is confirmed. In a word, the judge is to give the jury such advice as to the credit due to the evidence as he feels the evidence, *under all the circumstances*, deserves. The next and most important observation that this case suggests, is this—Lord Ellenborough states that all the judges, on a deliberate consideration of the case, were of opinion that a conviction of all the prisoners is a proper one, and ought to be followed by execution, where the accomplice has only been corroborated as to such parts of his story as apply to *some* of the prisoners. And *he gives the reasons* which induced the judges to be of that opinion; not

that *absurd one* that the case of several prisoners is "an exception" to any rule requiring confirmation as to the guilt of the prisoner, but because "all the "judges thought the accomplice had *sufficient con-* "*firmation* as *to the* SCOPE OF HIS STORY."

I come now to the York Trials in 1813, down to which period no instance can be adduced of any English judge having ever required corroborative evidence as to the guilt of the prisoner, as the only evidence by which an accomplice could be confirmed. As to those Trials, I agree that "they "decide nothing new." They are, therefore, not important as introducing any new principle of law or rule of evidence; but, as explaining, beyond a possibility of rational doubt, what the rule and the practice of English judges had been, and then was. I shall first observe, that where it is the duty of a judge to explain to the jury any point of evidence in a criminal case, (and still more, in a capital case, and where that explanation is for the benefit of the prisoner,) it is his duty to do it in a plain, unequivocal and perfectly intelligible manner; if the proposition that he is to lay down is capable of being so expressed. I shall next observe, that nothing is so easy as to express to the jury, that in looking to the confirmation to be given to an accomplice they ought to consider no corroboration of any weight but such as goes to the guilt of the prisoner; I shall, in the third

place, observe, that though it might happen that a single judge might in a single case express himself incorrectly, and intending to confine corroboration to one species of evidence in exclusion of all others, might express *the direct contrary*, yet this mistake can hardly be supposed to be repeated over and over again by the same judge.—Still more, that it should call up no observation from another judge present, nor from counsel either for or against the prisoners—still further, that another judge should adopt the very same course, and also again and again fall into a similar mistake—and lastly, that the counsel should adopt the error, and all this without any attempt from any quarter to correct it.—This, I say, is not to be imagined. And, therefore, I think it is fairly to be inferred, that there existed no mistake in the counsel or the court in laying down the law, however that law may have been laid down by them. Having made these observations, I shall proceed to consider the York Trials. And first, I begin with the charge of Mr. Baron Thomson, (afterwards Lord Chief Baron Thomson,) to the grand jury on the opening of the commission, *before any of the various and variously supported* trials had commenced, which took place at that commission; which charge, therefore, was not applied to, and could not be explained by the facts of any particular case—that charge, delivered at a time when

Chief Baron Thomson could not know and could not therefore refer to the confirmatory evidence to be given in any particular case. "Probably," he says to the grand jury, "it may be thought requisite, "in order to substantiate the charges against the "prisoner accused of being concerned in this "murder, or other offences that may come before "you, that the testimony of an accomplice should be "produced; which is necessary in many cases, in "order to prevent the worst offences from escaping "punishment. You will, however, attend to it "with caution, taking into consideration ALL such "circumstances AS MAY BE LAID BEFORE YOU, "TENDING TO CONFIRM HIS EVIDENCE, and to *satisfy* "YOU that IN HIS NARRATIVE OF THE TRANSACTION "in which he would involve others in equal guilt "with himself, he is worthy of credit. Such testi- "mony (that is, of an accomplice) is undoubtedly "competent, and it is *at all times to be received* "and *acted upon*, though with a sober degree of "jealousy and caution."* Here then we have the learned Baron directing the grand jury to take into consideration, not particular circumstances only having a tendency to prove the guilt of the prisoner, but ALL such circumstances as should TEND to *satisfy* the jury, that, "in his *narrative* "*of the transaction*, the accomplice is worthy of "credit."—And here too, instead of prescribing rules to the belief of the grand jury, his only re-

* 31st vol. Howell's St. Tr. 967.

striction of the confirmatory circumstances is *their satisfaction.* I next proceed to the statement of Mr. (now Mr. Justice) Park for the prosecution in Rex *v.* Swallow and others.* "The law," he says, "on "the subject of accomplices, I state to you now, gen- "tlemen, subject of course to his lordship's opinion, "and that of his learned brother by and by, know- "ing that I shall be set right, if I should inad- "vertently state it wrongly; but it shall be my "earnest wish never to misstate any principle of "law. I may be mistaken, but I will not endeavour "to mislead you. An accomplice is, of course, "a person involved in similar guilt with the "prisoners; he was along with them, otherwise he "could not relate the circumstances. But the law "of England has said, and has said wisely, that, "inasmuch as the most enormous crimes would go "unpunished, if accomplices were not examined, "they are competent witnesses, and are witnesses "who may be examined before any other cor- "roborative facts are given in evidence: they are "witnesses upon the credit of whose testimony a "jury are to pass their judgment, whether they are "speaking the truth. In that respect they stand "in the situation of other witnesses. But inas- "much as they come into court themselves impli- "cated in the same offence, juries will look at their "evidence with a greater degree of scrupulous- "ness." And then, after an observation upon the

* 31 Howell's St. Tri. 971.

then state of that country. He goes on:—"Still "always you must examine and sift their evidence. "The course which has been usually adopted, and "which will be adopted on this occasion, certainly "is to give corroborative evidence. We shall give "decidedly corroborative evidence upon this trial; "we shall call witnesses to you who will confirm "the accomplice in *many particular parts of his* "*story*. But here I would interpose a caution, in "which I shall have his Lordship's sanction, for I "have heard his Lordship lay down similar law; I "have heard *other judges* lay down similar law, "and I am satisfied I shall lay it down rightly: it "is *not* necessary, nor can it be, that the accom- "plice should be confirmed in every fact. If that "could be done, we should not want him at all. "It is default of evidence upon these facts, which "renders it necessary to call the accomplice. "Therefore, the circumstances to be looked at by "the jury are his own *demeanor* and *conduct* in "*giving his evidence*, and whether he is confirmed "by other witnesses *in such particulars as render* "*it proper* to give credit to that which he states."— This is the rule as laid down by Mr. Park upon the authority of the judges then present and other judges; and how does he act upon it? He tells the jury he will confirm the accomplice (among others) by Joshua Peace. "He will confirm the "accomplice *in these material points*, the having "*shirts* over their *clothes*, which *Moxon* will also

"*confirm*; the having *their faces blacked*, the "having *shot over his head*, and those other "circumstances I have enumerated." Now, neither Peace nor Moxon could give a particle of evidence against any of the prisoners, as tending in the least degree towards establishing or even rendering more probable the guilt or identity of the prisoners; for I put out of the way what Peace said about the voices of two of them; "that he would not speak "with certainty to the voices, only that he believed "them to be the voices of Swallow and Fisher. "The persons appeared to be altering their voices, "and he will not swear that at the time he heard the "voices, he knew he had ever heard them before, "but that he *imagined* them to be *something of* "*the sound of their voices*," which I take to be no evidence at all. Here then, if it were necessary to have an explanation of what is meant when the words "material parts of an accomplice's evidence" are used, we have it: we have Mr. Park distinctly laying it down, that parts of the accomplice's story containing *details of the transaction*, and having not the smallest tendency to establish the guilt of the prisoners, are *material points* of *confirmation*.— So much for the counsel. I come now to the judge. Mr. Baron Thomson, before recapitulating the evidence, proceeds to state the rule with respect to accomplices in these words:—"And "this charge, as you were told in the opening by "the counsel on the part of the prosecution, so far

"as it is to affect the prisoners at the bar, is princi-
"pally to be supported by the evidence of an accom-
"plice, who, you were rightly also told, is a com-
"petent witness to be examined before a jury; but
"though competent to be examined as a witness, is
"to be heard with extremely great caution; and
"juries are always advised by the court to pay no
"more regard to the evidence of an accomplice,
"than as, in the course of the inquiry, they shall
"find him confirmed by some unimpeachable testi-
"mony in SOME PART *of that evidence* he has so
"given, so as to induce the jury to think that,
"notwithstanding the character with which he him-
"self stands before them, he is entitled to credit.
"For, if an accomplice is materially confirmed in his
"evidence by such testimony as the jury think is
"unimpeachable, then, notwithstanding the cha-
"racter in which he stands before them, he is to be
"heard, and to be *credited* by them. And you
"were rightly also informed, that it was not neces-
"sary an accomplice should be confirmed in *every*
"*circumstance* he *details* in evidence. That would
"be almost a matter of impossibility; and if every
"circumstance to which he has spoken could be con-
"firmed by other evidence, there would hardly be
"occasion to take the accomplice from the bar, as a
"prisoner, to make him a witness here: that is
"certainly too much to be expected, and never is
"required. It is quite sufficient to see, that in *some*

"*material facts*, the witness, who shall have been "an accomplice, is confirmed *to the satisfaction of a* "*jury*; and that confirmation need not be of circum- "stances which go to prove that he speaks truth "with respect to all the prisoners, and with respect "to the share they have each taken in the trans- "action; for if the jury are satisfied that he speaks "truth in *those parts* in which they see unimpeach- "able evidence brought to confirm him, that is a "ground for them to believe that he speaks also "truly with regard to the other prisoner, as to whom "there may be no confirmation." Now, here it is distinctly laid down that confirmation as to *all* the prisoners is not necessary. It is not laid down that confirmation as to any is necessary, but that confirmation as to some, or one of them, would *entitle* the witness to credit in that part of his story in which he involves them all. He has already stated that confirmation "in *some material facts*" is sufficient. He does not enumerate the different facts, or specify the nature of them. It is clear that confirmation as to any of the prisoners is material, and *therefore* sufficient. Upon no rational principle other than that can it be held, that several are to be convicted on confirmation only as to one. And here again, I repeat the observation, that it was so easy to say that confirmation as to the prisoners, or some of them, was required, that one cannot account upon any other principle than that which I have mentioned,

why Mr. Baron Thomson should express the rule in such general terms as confirmation as "to *some* PART of HIS EVIDENCE" as sufficient; and again, that he should be confirmed "in *some material facts*." This observation forces itself irresistibly on the mind. I must here remark a misquotation in the pamphlet which I have so often alluded to. In repeating, in order to argue upon it, a part of Mr. Baron Thomson's charge, he says, "The learned "Baron expressly states the rule adopted by the "bench, always to advise juries to pay no more "regard to the evidence of an accomplice than as "they find him confirmed by some unimpeachable "evidence;" and there he stops: and according to that, the accomplice must be disregarded as to every part of his testimony which is not so confirmed;—whereas, Mr. Baron Thomson lays down directly the reverse. His words are, "than as they shall "find him confirmed by some unimpeachable testi-"mony in *some part* of that evidence he has so "given." His statement of the rule, I think, admits of no doubt to any unprejudiced mind. It was intended for, and addressed to, men of plain unsophisticated understandings. Unfortunately the author alluded to is more bent on supporting a favourite opinion, than in finding out truth. He observes, "that the case put in the concluding part "of the learned Baron's observations, is of confirma-"tion *against* some, but not *against* others of the

"prisoners." Here he changes the phraseology. Mr. Baron Thomson never makes use of the word "against." The words used by him are, "*as to* "*whom* there may be no corroboration." But the learned Baron, even supposing him to have contemplated the case of confirmation *as to* one, and not as to the others, distinctly lays it down that corroboration "*as to*" any is corroboration *against* all—that is, it goes to affect all by the credit that it gives to the accomplice; nor can any prisoner object to that confirmation as not evidence against him. But the plain good sense of what Mr. Baron Thomson says is this—"All that is required is, that the accomplice "should be confirmed in some part of the evi- "dence he gives, which you the jury shall think "so material as to entitle him to credit. And do "not imagine that you are to confine that corrobo- "ration to facts going to shew the guilt of the pri- "soners, in which case you would be bound to look "for circumstantial evidence against each prisoner. "That is not the rule, and therefore where he may "be corroborated as to one prisoner only, you are "not to confine the effect of it to that prisoner alone; "you are to consider its effect upon the general "credit of the accomplice, and in that point of view "it affords a ground for believing him as to the "others." Now, here I would remark, that Baron Thomson *takes no distinction between the case of one and of several prisoners tried.* Nor

does he call the latter "an exception to the rule." He states no rule but one, common to the case of all accomplices, and of all prisoners on trial. But if any doubt could be entertained as to the meaning which he intended to convey, that doubt will be removed by attending to his observations on the confirmatory evidence in this case. There were two unimpeachable witnesses examined, viz. Moxon, whose house was robbed, and Peace, who met a party of men on the road. Neither of them could identify any of the prisoners, nor did the testimony of either *afford the smallest direct evidence against the prisoners;* for I put out of the question what Peace swore as to the voices of two of them, and which I have stated before exactly from his cross-examination, as given by the learned Baron. Moxon swore that two of the persons who had entered his house *had shirts over their coats;* but that he knew none of them. Peace swore that he met a party; that he endeavoured to see who they were; that the men desired him to begone, and that, he not complying, one of them fired a gun over his head to intimidate him, which not producing the effect, another threw a stake at him, which hit him. He had known the prisoners before, but *could not swear that any of them was of the party he saw.* Now, let us hear how the learned Baron deals with this evidence, which has not the slightest tendency *directly* to affect the prisoners. He says, "It cannot be "disputed that the breaking of the house was per-

" formed in the way Moxon has related, two of the " persons (*and that is a circumstance for your* " *consideration*) being *disguised with shirts*, or " something like shirts, *over their coats. To the* " *persons of any of the men there, it is not in his* " *power to speak.* Nor is any part of the property " which *was taken out of that house, found in cir-* " *cumstances* to affect the prisoners *at the bar.* It " is for you to decide how far the evidence laid " before you will or will not justify you in saying that " they are guilty. There is the accomplice, Earl " Parkin, and about the credit that is due to accom- " plices I hope I have stated to you enough to " enable you to form YOUR *judgment, whether there* " *are* or are not *sufficient circumstances* in this case " to *satisfy you* that, bad as he is, (and most un- " questionably he is a very bad man,) he has, in the " main of the evidence he has given before you, and " in which he would implicate all the prisoners at the " bar, spoken truth. He has stated where it was " that they set out from. He has *stated the dis-* " *guises* which two of them, whom he mentions, had, " namely, *shirts over* their clothes. *Those disguises* " *Moxon spoke to as having been about the persons* " *of two* of the men who entered the house, *whoever* " *those men are.* Parkin speaks to their names. " Batley and Swallow he states to be the persons " who so dressed themselves. He states the part " which they all took in the business, and the final

" division of the plunder they had got from the house. " He states a *circumstance which took place as they* " *were going there*, and it is MATERIAL for your " attention, because Peace, I think, is a VERY " MATERIAL *witness for you to take into your consi-* " *deration*, as CONFIRMATORY OF THE ACCOUNT " which the accomplice has given; for he has stated " *his being met, in the situation* which Parkin has " described, by that party, as they were going in the " road to this house of Moxon's. In those CIRCUM- " STANCES which *Parkin has stated*, the witness *has* " CONFIRMED him; namely, THE FIRING A GUN " OVER HIS HEAD, BY WAY OF INTIMIDATING and " making him desist from the observation he was " taking of these men. *That fact is stated by* " *Peace to have taken place.* Another circum- " stance WAS THE THROWING OF A STAKE AFTER HIM. " Parkin positively swears to the fact, and Peace, who " has detailed *very circumstantially all this transac-* " *tion*, CONFIRMS him. He says he knew all the pri- " soners before this time, *but to the persons of any of* " *them he does not undertake to swear.*" The learned Baron then mentions what Peace had said as to his *thinking* that two of the voices were the voices of Swallow and Fisher, not positively swearing to them. Now, it is impossible for any unbiassed mind to read this, and not to see that confirmation as to the details of the transaction was, in the opinion of Mr. Baron Thomson, a confirmation in a material

part, so as to set up the credit of the accomplice. Why else did he call the attention of the jury to Moxon's account that two of the persons who entered his house had shirts over their coats; and why did he put that account in juxta position with the account the accomplice had given of the same fact? Why did he state that Peace was a *material* witness to *confirm* the accomplice, when Peace could do nothing more than state some acts done by some persons whom he did not know? In concluding, the learned Baron, referring to the accomplice, says, "You have "heard the *confirmation* he has received; and "the only question is, whether in this instance "you do not find him *so* confirmed as *to be induced* "to give *him* credit *for his narrative*, which will "implicate all the prisoners in this transaction." Here I would observe that the learned Baron speaks of the *accomplice* himself as being entitled to, and receiving credit from, the jury. The same language is used by every judge who has ever spoken upon the subject; in direct opposition to what the author of the pamphlet has laid down *from his own authority*, viz. that an accomplice is, and must ever remain, utterly unworthy of credit. In fact, it is obvious that the only advantage to be derived from the testimony of an accomplice, is in that part of it which is unconfirmed by other evidence, and which therefore rests merely on his credit. If he were to do nothing more than merely to state facts to which

others deposed, he need not be called. And why is corroborative evidence given? Not to give *additional* strength to that part of his evidence, which is confirmed by the testimony of unimpeachable witnesses, (for those witnesses would be sufficient to establish those facts without him,) but to make him be believed as to the *other* facts, as to which no corroboration can be had. In a word, to restore him to that credit, of which his participation in the crime had *primâ facie* deprived him.

I proceed to consider the next case tried at the York special commission, viz. the case of the King *v.* Mellor and others.* Mr. Justice Le Blanc was the particular judge whose turn it was to try these prisoners. Mr. Park having stated that he would call an accomplice, and observing upon the credit of accomplices, says, "The question is, (as his lordship "told the jury in your place yesterday,) is his evi- "dence so *connected*, so *well digested*, that it brings "credit *with the manner of telling* it? and is he "*confirmed* in SOME of *those* CIRCUMSTANCES, which "it is impossible to confirm him in, if he has not "been speaking the truth? And it need not be a "confirmation of him in *all* the circumstances; for "if we could prove all the facts without him, we "should then leave him to take that fate which his "offence deserved, instead of making him a witness." He then proceeds to state the evidence he means to

* 31 Howell's St. Tri. 998.

give, and having mentioned the evidence to be given by the accomplice, he proceeds thus: "Here, for "the present, I leave them; and SUPPOSING NO-"THING FURTHER TAKES PLACE, how shall I confirm "the accomplice as to these facts? I shall confirm "him, *as to there being four men*, by Parr, in the "way I have stated. I shall confirm him as to the "*retreat* of *four* men; for I have no less than three "or four different persons, who, at different parts of "the route, *saw four men* running in the *direction* "*to Dungeon wood*, and getting over *the wall into* "Dungeon wood, and looking behind them for the "purpose of discovering whether any body was "within sight. And I shall prove this fact, *which* "*is decisive*, that one of the witnesses, who has no "more concern with this transaction than any of "you, saw in their getting over the wall a *brazen-*"*mounted pistol* from under the coat of one of them." And after a few words more, he adds: "I *do not* "*know whether the witnesses will state that they* "*knew the particular persons*, but I *shall prove* "these facts applying *to four* persons. There is," he proceeds, "*another circumstance* I shall prove "to you by the accomplice; that two of them had "top coats of a *dark colour*, and the other two had "common coats of a *dark colour*. I shall prove to "you, by Parr, *that all the men had dark coloured* "*clothes*." Here Mr. Park states distinctly these instances as material confirmation, and ample confirmation, *supposing nothing further takes place*."

He further goes on to state, that the accomplice and Smith, one of the prisoners, went, according to the account that the accomplice would give, after the transaction, to a public house, where they had several pints of beer; that there was a drunken collier there; that Smith, who whistled well, began to whistle, and the collier danced; and that he (Mr. Park) would call the accomplice and the *wife of the publican to prove* this. Now, I ask, how do any of these confirmatory facts tend to shew the guilt of any of the prisoners.—I come now to Mr. Justice Le Blanc, who always had the character of being one of the most sensible, and one of the most discreet judges that ever sat on the bench; as Lord Chief Baron Thomson was considered the best crown lawyer of his day. Speaking of the accomplice, he says, "He "does not stand in the situation of a witness to whom "full and perfect credit is to be given. So far his "testimony is to be received as the account given by "himself, and the corroboration given to it by other "witnesses that shall be produced, may SATISFY YOU "that the *account* he gives is true." And in going over the evidence of the accomplice, he uses these words: "He says that Mellor had on a bottle-green "top-coat, (and it becomes *material* in *considering* "*the circumstances given in evidence in confirma-*"*tion*, to attend to the dress of the prisoner,) and "that the other prisoner, Thorpe, had on a dark "coloured top-coat." It will be recollected that

Mr. Park had said he would *confirm* the accomplice as to the colour of the clothes. Parr had sworn, that though he was sure he saw *four* men, they *were all strangers to him; he did not know* them. After proceeding in the recapitulation of the evidence, Mr. Justice Le Blanc observes, "This "is the account he (the accomplice) gives of what "took place at the plantation, *making the number* "*of* FOUR *persons agree with the account of* FOUR "*persons* whom *Parr had* seen in the plantation as "he rode up, and *all in dark coloured* clothes, which "*according to this man's* account they *all had* on." Here then we have Mr. Justice Le Blanc pointing the attention of the jury to this, as confirmatory of the accomplice. He then repeats the evidence of the accomplice, as to his and Smith's going to the public-house, and as to the whistling and dancing; and adds, "that is mentioned as a circumstance, "because *you will find it confirmed* by other per- "sons not connected with the transaction, who "remember what passed at the time, from that cir- "cumstance." And having closed the evidence of the accomplice, he adds, "Therefore you will examine "the *different parts of the account* he has given, "and see how far there are *different circumstances* "proved by other witnesses, which INDUCE YOU to "doubt the truth of what he has said, or to *believe* "that the account he has given is true." And another witness having given evidence of having

seen four men, he observes, "That again *confirms* "the account that the *number who did this consisted* "*of four*, and that they immediately made off that "way." Having gone through the evidence on the part of the prosecution, he proceeds to give a summary of it. It consists, he observes, of the testimony of the accomplice, and of the different persons in the same manufactory, who saw the preparations, and heard declarations, (which evidence, it is clear, would go directly to implicate the prisoners,) and then Mr. Justice Le Blanc goes on: "There is the "*confirmatory* evidence of those persons *who saw* "*the four men* immediately after the report, *making* "*off in the direction described* by the accomplice, "and *dressed as is* described by the accomplice, all "*in dark clothes.*" Here then you have Mr. Justice Le Blanc distinctly relying on this as *confirmatory* evidence, and *classing it by itself*, as distinct *from* the other evidence, which went to the identification of the prisoners. It is impossible to read these extracts from the case of Rex *v.* Mellor, and not to be satisfied beyond a doubt that Mr. Justice Le Blanc not only did not hold, that evidence of the identity of any of the prisoners was necessary to confirm an accomplice, but that his words, and still more his conduct, evinced, as strongly as words and acts together could do, a directly contrary opinion.

The next of the York cases in which the doctrine upon the subject of accomplices comes in question, is

Rex *v.* Haigh and others.* It was tried by Mr. Justice Le Blanc. The indictment was for demolishing Mr. Cartwright's mill. Mr. Park observes, in stating how he means to fix the prisoners with the crime, "Here is an attack made, at "which no persons can, of course, be present, that "are not themselves criminal, except the gentleman "who is the object of attack; and he, from his situa- "tion, *could not know any single individual who* "*was present.*" He then proceeds to mention, that he will call accomplices, and adds, "The *general* "*circumstances*, to which Mr. Cartwright will speak, "will be fully confirmed, or rather, *he will fully* "*confirm the accomplices.*" Can any one doubt, after that, what Mr. Park's view of the subject was? Upon the subject of accomplices, he states the rule of law. "The rule of law," he says, "laid down "by one of their Lordships, the other day, was that "which every lawyer *heard with entire* satisfaction, "and to which, I have no doubt, every lawyer will "accede." What? Accede to, and hear with satisfaction, as the rule, that which altogether omits to state to the jury what the *essential* part of the rule is, according to the author of the pamphlet, viz. that the corroboration must go to the identity of the prisoner? Mr. Park goes on, "It has been *usual* to "confirm the accomplice *in some of the* TRANSAC- "TIONS to which he speaks; he cannot be confirmed "in the *main transaction*" (i. e. as I take it, the

* 31 Howell's St. Tri. 1094.

guilt of the prisoners,) "because, if he was, we "should not call him as a witness, but should put "him upon his trial. What is expected is, that we "should confirm him in *some* of the MINUTE PARTI- "CULARS. It is not necessary, where an accomplice "is called against a greater or a less number of "persons, that he should be confirmed in the facts "respecting every prisoner. Mr. Baron Thomson, "in his charge to the jury, stated the law most "accurately." He then proceeds to state Mr. Baron Thomson's charge, as given before in Rex *v.* Swallow, and then goes on thus: "The accomplices "will speak to all the prisoners now standing at "your bar. Now, therefore, taking that for granted, "I will endeavour to shew you how I can confirm "these accomplices as to *some* of them; for I state "at once, in the outset, that I cannot confirm them, "as to circumstances, concerning *all*." Mr. Justice Le Blanc, in summing up, having stated that Hall, the witness, was an accomplice, proceeds, "He is "not, therefore, a person standing in that upright "situation, that you can receive his evidence without "considerable distrust and caution; and, therefore, "you will examine and see, whether, from the *other* "*facts* proved in the cause, and the testimony of "other witnesses, these facts, OR ANY OF THEM, are "proved by other evidence, so as to convince you, "that, bad as he is, yet, in this respect, he speaks "the truth. His *evidence is to be left to your con-*

" *sideration;* but from the account of his being " engaged in this transaction, he does not shew " himself in that light that you can look at his evi- " dence without caution. You will see how the " other evidence in the cause falls in with his, and if " you believe that he is telling the truth to you upon " *this* transaction, he is a witness upon whose testi- " mony you will rely." It was stated by the accomplices, that one of the prisoners, in going home from the attack on Mr. Cartwright's mill, fell into the mill goit and lost his hat, and that they called at a house and borrowed a hat for him. They further deposed, that some of them called at another house to get something to eat, and the woman of the house gave them some muffin bread and some water through the window. These two women are called to *confirm those facts*, and they state them, as the accomplices had done, *not knowing, however, any of the persons.* Mr. Justice Le Blanc states these facts to the jury, as sworn to by the accomplices and *by the women;* and having gone through the evidence for the prosecution, he adds, "This is all the evidence on " the part of the prosecution, and it shortly consists " of this; of the evidence of those persons who stood " in the situation of accomplices, who were there " themselves, and who speak of the prisoners at " the bar being there also, in different parts of " the transaction; and likewise give an account of " the different circumstances which took place in

" *going to this* mill, *while there*, and *during the time* " *when they were going home;* and of the testimony " of different witnesses, from various places, as to " these separate and *distinct circumstances, to* " *confirm the accomplices in those parts* of the case " to which they have alluded." Having gone through the evidence, he states that the question is, whether the evidence has made out the case against the prisoners, or *any of them*. He then mentions that it has been supported by accomplices, and observes upon the caution with which their testimony ought to be received, and that the jury will expect them to be confirmed by other persons; and then he proceeds: " You will judge how far they have or " have not been supported by the other witnesses " that have been called. It is not necessary, that " in the *whole of the* ACCOUNT *they* give, they should " be supported by other testimony; but if you find, " from the support they receive from other witnesses, " that they are telling truth in SOME PARTICULARS, " you will of course be *justified* in *believing* that " they are *telling you* truth in the *whole of their* " *narrative*. On the contrary, if you find that they " are speaking falsely in *some particulars*, you will " then distrust their testimony in the whole. Now, " the present case certainly does not rest upon the " testimony of one, nor indeed of all taken together, " but the *facts* which they have spoken to, are, in

"*many instances which I have detailed to* you,
"and which I have observed upon as I went along,
"supported and *confirmed by* different persons un-
"connected with them, and who have been drawn
"from different parts and different places. In
"addition to that, you have some circumstances
"applicable to some particular prisoners, which *do*
"*not depend at all upon that sort of testimony.*"
He mentions Haigh's being wounded, and Brooke's hat, so that he *distinguishes* this *circumstantial evidence* against particular prisoners, from the *confirmatory evidence.* He concludes by saying, "If
"you are satisfied that the evidence fixes this crime
"upon *any* of the prisoners, as with respect to such
"against whom you think *it defective*, you will
"acquit them; as to the others, you will convict
"them: and if you think it does not apply to *any*
"of them, you will acquit them all. If you find the
"account of the accomplice confirmed as to all,
"which is more indeed than can be expected, they
"must all bear the fate of the same verdict. You
"will consider the case, and form *any discrimination*
"which in your judgment, you think the case de-
"serves." In all that has fallen from Mr. Justice Le Blanc, there is not a syllable said *expressly* as to the necessity of corroboration as to the identity of the prisoners. If such were the rule, it is impossible that a person of Mr. Justice Le Blanc's known

discretion could have left the jury in doubt about it. But he does more than leave them in doubt about that. He actually leads them to believe it is not necessary to have corroboration as to the identity of the prisoners; for he tells the jury that it is sufficient if the jury are satisfied by other evidence that he is telling truth "*in some particulars;*" they may, in that case, believe him as to all. He had before directed the jury to see whether the facts proved by the accomplices, "or *any of them,*" were proved by other evidence, so as to *convince them* that in this respect he spoke truth. I have, however, given the concluding part of his summing up, because the writer of the pamphlet attempts to extract an argument from it, to shew that Mr. Justice Le Blanc considered corroboration as to the prisoners necessary, because he tells the jury, that "if they are satisfied that the "evidence fixes the crime upon *any* of the "prisoners, as with respect to such against whom "you think it defective you will acquit them"— and he adds, after some more observation, "if you "find the account of the accomplice confirmed as to "*all*, which is more indeed than can be expected, "they must *all* bear the feat of the same verdict"— and the writer asks, what was the result? "why," he says, "the jury returned a verdict of guilty against "five only, acquitting three others, with *respect to* "*whose identity and share in the transaction there*

was a deficiency of corroboration."* Now, I repeat it, Mr. Justice Le Blanc would never have left this to be extracted from what he said by the ingenious process of reasoning which this author has gone through. But any one who considers the evidence must see that it was *defective* as to the two Brooks, James and John; for the accomplice only speaks to their having been seen in the first assembling at Sir George Armitage's fields, before the party set out to attack the mill; they were not *seen by any body at the attack*, and an *alibi* was proved by two witnesses for James Brook, quite consistent with his having been at Sir George Armitage's fields, and not consistent with his having gone further, and he and John Brook got excellent characters; and as to Hirst he *admitted* on his examination that *he had gone with the party*, and so directly *confirmed the accomplice* as to his guilt, so that the writer is incorrect in stating that he was

* As to this, I shall in the first place observe, that the author in thus explaining the acquittal of some of the prisoners, seems to have forgotten his own "rule;" or rather his "exception" to the rule; for according to that if the accomplice is corroborated as to any one of the prisoners, it is sufficient as to all. To say, therefore, that such of them as were convicted, were so convicted because there was confirmation as to their guilt; and that others who were acquitted, were acquitted because the accomplice was not sufficiently corroborated as to them, is to assign a reason for the result of this trial, which directly contradicts every thing that the author has before laid down.

acquitted for want of corroboration. Why then was Hirst acquitted? The prosecutors had recourse to, and gave in evidence, his examination and confession which must all be taken together, if relied on at all. Now, he stated that he was compelled *by threats* to go—That was part of his examination, which the jury were at liberty to receive. Besides, he got a good character. Clear it is, that it was not *for want of corroboration* of the accomplice that he was acquitted. Having thus shown that the writer was unfounded in what he states, that the three prisoners were acquitted for want of corroboration, and not as Mr. Justice Le Blanc put it, for *defect of evidence* against them, I shall next show that the other five prisoners were not convicted on the ground of corroboration as to their identity—There was not one of them as to whose guilt there was any corroboration of the accomplices except Haigh, who had received a wound at the attack of the mill, and Walker, as to whom there is an incredible account given by a witness of his having boasted in a shop *full of people*, of his exploits on the occasion. As to Thomas Brook, there was the circumstance of his having lost his hat; but though a hat was found, there was no evidence that it was his, and none but that of the accomplice's, that he had lost his. So that Dean, Ogden, and Thomas Brook, were *convicted* without any other evidence

of their guilt than that of the *accomplices*; and Walker without any other evidence than that incredible swearing that he had boasted of having been there. Yet Mr. Justice Le Blanc does not in the conclusion, *point out to the jury any corroboration as to the identity of any of them except Haigh* and *Thomas Brook*; the first on account of his wound, and the latter of his hat. It would have been his duty to have stated the corroboration, and the prisoners to whom it applied, and to have *directed* the jury to acquit the others; but he leaves it to them to "form *any discrimi-*"*nation* which in their judgment they thought "the case deserved." The writer of the pamphlet deprecates the collecting the doctrine upon this subject from some equivocal expressions. But what is the utmost that he can scrape up in favour of the rule as he states it, but an equivocal expression?—an equivocal expression used by Mr. Justice Le Blanc in this case, and which was sufficiently explained and rendered quite unequivocal in the subsequent cases tried before that learned judge. I have further to observe, that Mr. Justice Le Blanc in this case *distinguishes the confirmatory* evidence from the *circumstantial* evidence against the prisoners; for he states, that in addition to the evidence of the accomplices and the confirmation it had received, there were "some circumstances "applicable to some particular prisoners which do

"not depend *at all upon that sort of testimony;*" and then he mentions the circumstantial evidence against two of the prisoners.

We come next to the case of the King *v.* Job Hey, and others, for a burglary, in the house of George Haigh.* It was tried before Mr. Justice Le Blanc, whose conduct in this case is so unequivocal, and was so clearly governed by the principle that corroboration as to the *details of the transaction* is sufficient, that it is impossible to read this case without being satisfied that such was that learned judge's opinion. George Haigh, the owner of the house, was called, and *detailed circumstantially* the attack on his house and what took place, but *he could give no evidence* to *affect any of the prisoners.* His servant, Tillotson, was next examined, and he agreed with his master as to the details, adding others which fell within his own exclusive observation, but he *gave no evidence* as to the identity of the *prisoners.* An accomplice is then called. When Mr. Justice Le Blanc had finished the recapitulation of his evidence, he uses these words: "This is the account given by the "accomplice, Carter, and on reading over his ac- "count and *comparing it* with *the account which* "you *have just before heard* from Haigh, and from "*his man Tillotson*, it *agrees* in *every particular* "as to *what the people said*, the way *in which* the

* 31 Howell's St. Tri. 1138.

" *doors were beaten and knocked,* and the *manner*
" *in which some of the robbers retreated* till they
" were joined by their companions, and afterwards
" *received the gun from* Tillotson, and then *fol-*
" *lowed him into the kitchen,* where the *pistol was*
" *delivered to them.*" He then speaks of a top coat which had been taken away and sent back, as another circumstance, and of the *stock of a gun,* which the accomplice swore had been broken and left behind, and which was found by Tillotson; but as to the person whose gun it had been, or who had had it there, no *evidence was* given except by the accomplice. And having stated the cross-examination of the accomplice, the learned judge proceeds thus: " You will look at his evidence in the same
" way in which you, or gentlemen sitting in your
" place, have had occasion to consider other evi-
" dence of the same nature, namely, as suspicious;
" and see whether or not, from the manner in which
" *it tallies and agrees* with the *evidence* of others
" it appears to you that the man is telling truth.
" And to be sure, with respect to almost *every par-*
" *ticular of what passed in the attack of this house,*
" as given by *Haigh and by Tillotson,* the account
" given by this accomplice, *tallies with theirs,* as to
" the *expressions used*—the *noise made*—the *man-*
" *ner in which the door was opened*—the *retreat of*
" *the people* at first, *their afterwards going in,*
" and *what arms were delivered before they came*
" in—*what arms were discovered afterwards,* and

" the *expressions repeated* by the servant, 'that if " his master did not sell his milk among his neigh- " bours, they would come again,' which had nothing " to do with their attack." Thus, Mr. Justice Le Blanc, having given the evidence of the accomplice, and directed the attention of the jury to what they ought to look to for confirmation, namely, "the manner in which his evidence tallies with the evidence of others," points out to them " that it tal- " lies exactly with the evidence of Haigh and Til- " lotson in almost every particular of *what passed* " in *the attack of the house.*" For what purpose does he do this? To mislead the jury, if the anonymous writer be correct. Is it possible for any juryman with a plain unsophisticated understanding, to hear these observations of the judge—is it possible for any man possessed of any other sort of understanding than that which the anonymous writer has brought to the discussion of this question, an understanding obscured by a man's rooted prepossession, to read these observations of the judge, and not to be satisfied that that judge pointed out this coincidence in the *details* of the transaction as matter of strong corroboration? Mr. Justice Le Blanc, having thus disposed of the evidence of the accomplice and its confirmation, proceeds to state the other evidence in the case, part of which was the confession of the prisoners. And having stated the question to be whether the prisoners were part of the company that attacked the house, he goes on

thus: "As to the particular persons being there in "the present case, you have the account given by "the accomplice, speaking to the whole, *and tally-* "*ing exactly in all its circumstances* with *the ac-* "*count of the robbery* as *detailed by Mr. Haigh* "*and by his servant*: and as to the particular "circumstance of *a stock of a gun*, which one of "the people had, having been broken, and a "part of it left behind, which is found next morn- "ing near one of the doors. And, *in addition* to "this, you have evidence, that those men when "taken up, admitted they were there, &c." I ask, is all the evidence of Haigh and Tillotson, in the opinion of the judge of no moment, or to be thrown over board as useless? It had no effect in the case except as it confirmed the accomplice. Was it, or was it not, (not merely admitted but) relied on by the judge, and for what purpose and with what view was it so relied on? This is a question which the anonymous writer must answer before he can hope to gain a single convert to his opinion.

I come now to the last case in the series of trials in which an accomplice was used, the King *v.* James Hey, and others, for robbing James Brook in his dwelling-house, &c.* It, also, was tried before Mr. Justice Le Blanc; and I think it important to have so many instances which clearly show that learned judge's opinion upon the subject, because the anonymous

* 31 Howell's St. Tri. 1147.

writer has caught at an expression of his, and exercised all his ingenuity upon it, whilst he shuts his eyes upon broad and glaring facts.

The first witness is James Brook, who gives *all the details* of the *transaction*, but *can say nothing as to the persons of any of the prisoners* except *James* Hey, and as to him he tells that a corner of the handkerchief which covered the face of one of them was raised, which gave him an opportunity of seeing his face, and he *believes* that Hey was the man, but does nothing more than *believe*, " for he *wishes not to speak* with *certainty*." I think that as to this I do not hazard too much when I say, it is not sufficient evidence to affect Hey. The accomplice Carter is then called. His evidence is stated by the judge, who, at the conclusion says, " This is the account given by Carter, " who is in every sense an accomplice; and the " question with respect to him is, how far that ac- " count tallies with THE NARRATIVE OF THE TRANS- " ACTION, as *given by the other witnesses*, so that " you can be satisfied that in the main of his account " he tells you the truth." And after going through the whole of the evidence, the learned judge proceeds in these words, " It is upon this evidence you " are to decide. You will *compare the* ACCOUNT " GIVEN by the MAN HIMSELF who was robbed, of " THE TRANSACTIONS WHICH TOOK PLACE that

" night, keeping in your mind *that he speaks only to* " *four persons being there,* not being able to speak " *at all* to the person of any one of them except " that of Hey the prisoner. He has given you an " account of what *part* of Hey's countenance he " had an opportunity of seeing, during the time " he was there, and of his *belief* upon the sub- " ject from what he observed, but he wishes *not to* " *express himself with certainty.* Then you have " the account of Joseph Carter, who was, strictly " speaking, an accomplice in this fact, who professes " to be one of the four, and who has related the " *circumstances which passed that night,* which " YOU HAVE HAD AN OPPORTUNITY OF COMPARING " WITH THE ACCOUNT GIVEN BY THE MAN WHO " was robbed and OF JUDGING FROM THAT COM- " PARISON, *whether the account* he has given in " OTHER particulars is a true account, so as to be- " lieve that he is speaking the truth in OTHER cir- " cumstances, and to rely upon him WHEN HE " STATES WHO WERE HIS COMPANIONS. The next " SPECIES of evidence is &c." And the learned judge proceeds to state the evidence going directly to affect particular prisoners; which in this as in the former cases, he treats as different *in specie* from the confirmatory evidence.

I have thus given the observations of Mr. Justice Le Blanc in this case, and I again ask can any man whose mind is not blinded by prejudice entertain a

doubt whether that learned judge considered a coincidence in *the details* of *the transaction* as constituting in itself matter of confirmation of an accomplice? This and the former case put that question beyond a doubt. And how does the anonymous writer deal with these two cases? As to the first he extracts a part of what fell from the judge upon this subject, omitting *the strongest part* of it; and as to this last case of James Hey, finding the direction given to the jury by the judge to be too strong for him, he very *prudently omits* it altogether, and disposes of the case with this remark: "Accomplices were used in this case, but *no ob-* "*servation occurs upon their corroboration.*" And then he proceeds, "I have thus *minutely* and "*faithfully* investigated the trials on the York "Special Commission &c." It will be for those who read the report of those trials to say how far he has done so. He has pledged himself (page 29) "to *demonstrate* that the York "Trials EXPRESSLY RECOGNIZE and *abundantly* "*illustrate* the rule of corroboration as he had "stated it." How far he has succeeded, it is unnecessary to say. He has not even attempted to redeem his pledge by showing any such "*express* "*recognition*;" neither has he shown any illustration of it. His entire effort from the beginning to the end of his review of these cases has been,

if possible to *explain away* what has fallen from the court, and to persuade his readers, that the expressions of the judges must not be taken *according to their natural import;* and this he endeavours to do by subtle reasoning, beyond the comprehension of any of those juries to whom the words of the judge, that are thus to be explained away, were addressed, and for whose guidance alone they were intended. He urges this argument, that in every case of a conviction on the evidence of an accomplice, there was "confirmation as to the identity of the accused." If it were material to contradict this allegation, I think I have already shown the contrary. But it is unnecessary to do so; for the argument is a weak and idle one, not going to the point in controversy. The question is not whether the guilt of the prisoners was or was not sufficiently established, so as to justify the convictions: the question is, did the judges lay down or did they act upon the rule, that confirmation as to the identity of the prisoners was absolutely necessary, or did they admit circumstances to go to the jury as corroboration, which had in themselves no tendency to show directly the guilt of the prisoner? I submit, that I have shown, that in every one of the cases from first to last, the judges admitted such circumstances as confirmatory; and still more, that they pointed

them out, and directed the attention of the jury to them, as having that effect. They could have no other.

In addition to the cases upon the subject of the corroboration of an accomplice which have been hereinbefore noticed, I am aware of but two more; one before Mr. Justice Bayley, Rex *v.* Dawber and others, 3 Stark, 34, A. D. 1821; and Rex *v.* Barnard and others, before Baron Hullock, in 1823, Carrington 88. Rex *v.* Dawber, was an indictment for grand larceny. "An "accomplice was examined on the part of the "prosecutor, who was confirmed in the testimony "which he gave as to some of the prisoners, but "not as to the rest. Bayley J. informed the jury "that if they were satisfied by the confirmatory "evidence which had been given, that the accom- "plice *was a credible witness*, they might act "upon that testimony, with respect to others of the "defendants, although as far as his evidence affected "them, it had received no confirmation. The "prisoners were convicted." I have given the report of this case, as it is short, in the very words of the reporter. After reading this and the other cases I have mentioned, one cannot help expressing some astonishment at the boldness and confidence with which the anonymous writer lays it down that "it is clear that an accomplice is, *in himself*, "utterly undeserving of credit, and that he re-

"mains unworthy of belief as previously, except "in so far as his testimony is corroborated." The last case I have mentioned, viz. Rex *v.* Dawber, is important, not merely for the point ruled by the judge, for that I take to have been sufficiently settled before; viz. that corroboration as to one of several prisoners on trial is sufficient; but for the reason given by Mr. Justice Bayley, which shows the foundation on which the law as to that rests—"If," said he to the jury, "*you* are satisfied "by the confirmatory evidence, that *the accomplice* "is A CREDIBLE *witness*, you may act upon his "testimony with respect to the others." The thing then that is necessary is, to *satisfy the jury* that the *accomplice is a credible witness;* and *one* way by which that *may* be done is by confirming him as to some of the prisoners. His evidence is sufficient in point of *quantity* of proof, if its *quality* can in any way to the satisfaction of the jury be rendered unexceptionable.

Rex *v.* Barnard and others was an indictment for a burglary, tried before Mr. Baron Hullock. "The accomplice was called for the prosecution, "and a good deal shaken in his cross-examination; "but was confirmed on several material points, by "other witnesses. Hullock B. in summing up, "said, he would never advise a jury to find "prisoners guilty, on the evidence of an accom- "plice without corroboration; but it was not neces-

" sary that he should be corroborated on *every* " material point, as then, his evidence would be " superfluous; but he must be confirmed in *such* " and so many material points, as to *convince the* " *jury* that his statement was the truth. Verdict— " guilty against Barnard and Farmer. Bedford not " guilty." I have given this case also in the words of the reporter.

I have now gone through every case that has come to my knowledge on the subject of the confirmation which an accomplice requires. I think I have redeemed the pledge which I gave—First, that no English judge ever stated, that confirmation as to the identity of the prisoner was necessary: Secondly, that all judges have studiously avoided so restricting the rule: Thirdly, that to every *common* understanding they have distinctly laid down the contrary: Fourthly, that in pointing out to the jury the circumstances of corroboration, they have directed the attention of the jury to matters which in themselves could not have the least possible *direct* bearing on the guilt of the prisoner, and which could only be material as they tended to confirm the general narrative of the accomplice: And lastly, that in some instances (as in the three of Mr. Justice Le Blanc,) some of the soundest and most prudent judges distinguish between confirmatory evidence, and circumstantial

evidence against the prisoner. The opinion that circumstantial evidence against all the prisoners is required, cannot be sustained. The authorities are directly against it. All the cases in which corroboration as to one prisoner has been held sufficient to sustain a verdict against all, are directly against it. There is neither reason nor common sense in requiring it in the case of one prisoner, and not in the case of another; or in the case of a prisoner tried singly, and not in the case of a prisoner tried in company with others. The cases in which several prisoners are tried together are so numerous, as to render any rule nugatory which does not include them. To require corroboration as to some, or one, of the prisoners, where several are tried together, and not as to the rest, is not reconcileable with any principle of reason, justice, or common sense. The only rule, therefore, which has the appearance of reason to support it, is that which I have endeavoured to show, has uniformly, and without any exception, been laid down, and acted upon by the English judges; which is, that "the confirmation ought to be in such and so "many parts of the accomplice's *narrative*, as may "reasonably satisfy the jury that he is telling truth," without restricting the confirmation to any particular points, and leaving the effect of such confirmation (which may vary in its effect according to the

nature and circumstances of the particular case) to the consideration of the jury, aided in that consideration by the observations of the judge.*

* Since writing the foregoing, a case has come to my knowledge, which, if accurately reported, ought to set this question at rest. It is the case of the King *v.* Birkett and Brady, in Russell and Ryan's Crown Cases Reserved, p. 152. The words of the reporters are these: "They (i. e. the twelve judges) also thought that an "accomplice did not require confirmation as to *the person he* "*charged* if he was confirmed as to the *particulars of his story*." In their preface, the reporters state, that "they are enabled "from the source from which these cases have been obtained to "vouch for their authenticity," and they express their obligations "to all the learned judges with whom they had occasion "to communicate, upon any of the cases contained in that "volume."

Even in Scotland, where the evidence of an accomplice unsupported is insufficient to convict, a confirmation of his testimony on certain parts of the case is all that is required. "The true way," says an eminent writer on the criminal law of Scotland, "to test the credibility of a *socius* is, to examine him minutely as to small matters, which have already been fully explained by previous, unsuspected witnesses, and on which there is no likelihood that he could think of framing a story, nor any probability that such a story, if framed, would be consistent with the facts previously deposed to by unimpeachable witnesses. If what he says coincides with what has previously been established, in the seemingly trifling, but really important matters, the presumption is strong that he also has spoken truly in those more important points *which directly concern the prisoner*; if it is contradicted by these witnesses, the inference is almost unavoidable, that he has made up a story, and is unworthy of credit in any particular." *Alison's Prac. of the Crim. Law of Scotland*, 157, (cited in Ros. Law of Evidence in criminal cases, 120.)

It is satisfactory to find that the author quoted above concurs with me on this subject. Experience, however, is more valuable

There remains but one question more to be discussed upon this subject, viz. whether accomplices are capable of affording reciprocal corroboration to each

in the ascertainment of truth than any speculative opinion, and I have had abundant experience of the truth of that opinion which I have formed on this subject. During my attendance at Dublin Castle as a Law Officer of the Crown, frequent opportunities were afforded me of putting my opinion to the test. Great crimes were frequently committed, and rewards were offered (sometimes very considerable) for the discovery and prosecution of the offenders; and never did this occur without exciting in my mind a very painful anxiety lest those who came forward to give information and offered to prosecute, might be tempted by the hope of the reward to swear falsely, and to accuse innocent persons. To guard as much as possible against this, I always gave directions that the informer should be brought before me; and having made myself accurately acquainted with the details of the transaction, I heard the story of the informer, and by his inaccuracy as to the circumstances, I was frequently able to detect his falsehood, and thus to save innocent men from imprisonment in a jail, and trial for their lives. A remarkable instance of this kind I will mention. There are few who have not heard of the atrocious crime which was committed at a place in the county of Louth, called Wild-goose Lodge. That house had been broken into at night by a party of villains. The occupier of it was a stout-hearted man, and though he had no other weapon than a pitchfork, he beat off the robbers; and afterwards prosecuted to conviction two of them. This was enough to make him an object of general detestation with the lower orders, who determined to take signal vengeance of him. For this purpose, an extensive conspiracy was formed against him, which extended to three different counties. Three different parties proceeded, by different routes, on a night that had been agreed on, to Wild-goose Lodge, and surrounding the house of the unfortunate man with straw, they set fire to it, and the house and all its inmates, men, women and children were consumed in

other. As to *incompetent* witnesses, the question can never arise, for none of them can be *heard*. The question has never yet undergone a consideration. It is simply this, whether, where there is merely a defect in credit, that defect is not diminished by coincidence of testimony, even though that testimony is in itself defective in credit. In all the cases which I have met with, corroboration by unimpeachable witnesses was in the power of the prosecutor, and it did not become necessary to take

the flames. A large reward was offered for the discovery and prosecution of the perpetrators of this atrocious crime. I had been sent down to prosecute, and succeeded in convicting several. I became, thus, perfectly acquainted with the details. A letter was received at the Castle from a country magistrate, stating, that a man had appeared before him in the character of an accomplice, and offered to swear against several farmers, as having been engaged in the transaction. The letter was laid before me. I gave directions that the informer should be sent to town, and not permitted to hold communication with any one till I saw him. In the mean time, I wrote to the stipendiary magistrate of Louth, who was well acquainted with the localities, to meet me. We heard the man's story, and, from the account he gave of the details we detected his falsehood; we were satisfied he never had been there, and that he knew nothing either of the place or the circumstances, except what he heard from public report. Now, that man might have come forward, and sworn directly and simply against the persons whom he accused, without going minutely into the details and circumstances, and he might have escaped detection. If then, innaccuracy in the details of the transaction establishes the falsehood of the supposed accomplice's narrative, accuracy in those details must contribute to corroborate him.

the opinion of the court on this question. They have, therefore, proceeded as if corroboration was still necessary, though there were more than one accomplice. Both the court and counsel have *treated* the cases of one and more accomplices as the same, their attention not having been distinctly called to the subject by the necessity of deciding it. Still, however, in commenting upon the evidence, observations fall occasionally from the court and from counsel, tending to show that both felt the additional strength that the concurrence of one accomplice gave to the other. In the case of Rex *v.* Despard, the Solicitor General relies on this coincidence; still, however, adding that both the accomplices are confirmed by unimpeachable witnesses. Lord Ellenborough, in observing upon the testimony of Windsor, puts forward to the jury this coincidence; and in one or perhaps two instances makes use of this expression, "and Emblin" (the other accomplice) *confirms* him in this." He also says, "that some cases rest almost *entirely* on the testimony of accomplices." But the strongest authority for holding that the coincidence in the testimony of two accomplices confirms both, is to be found in the speech of Mr. Sergeant (now Chief Justice) Best, in *the defence* of the prisoner, Colonel Despard. He thinks it necessary to apply himself particularly to this part of the case, and to anticipate the arguments which the

Solicitor General, he foresees, will naturally make on it. I shall give his words:—"I may, however, be "told, that though it must be admitted to me—for "it certainly must—that there are only four "persons, who at all affect Colonel Despard "in this transaction; and although not one of "these persons, standing alone, would be en- "titled to credit, yet the concurrent testimony of "these four persons establishes a case, which the "individual testimony of each standing separately, "could not accomplish. I should *feel*, certainly, "the *strength of the observations* which the "Solicitor General will presently make upon the "effect of concurrent testimony in many cases; "but it appears to me, that this is one of the "species of cases to which observations of that sort "cannot be applied. I am fully aware, that if "witnesses who are brought from distant quarters, "tell a story in which they all agree, it carries with "it a striking appearance of truth; *because it is* "*scarcely possible that a coincidence in all respects* "*in the circumstances could exist, unless that story* "*were true.* But this observation which has been "constantly made upon concurrent testimony, loses "all its effect, when it is applied to the case of a "conspiracy; for if men conspire to fasten a crime "about the neck of others, they will take care that "their stories shall agree. The *moment*, there- "fore, *it is established that there was a con-*

" *spiracy*, the inference arising from correspon-
" dence in testimony is refuted; for it is the nature
" of a conspiracy, that the testimony should be
" consistent." And, after an observation by way of illustration, he proceeds—" Then I put the
" question, 'Do you believe there exists a con-
" spiracy?' For, *if you do*, if the story is told
" by a hundred, it is the same thing as if told by
" one. For by putting one broken reed to another,
" you do not give any greater strength by the
" union. Show," he adds, "there is ground to
" presume they have concerted together for the
" purpose of charging an offence against Colonel
" Despard, which belongs wholly to themselves, and
" there is an end of all their evidence. In the
" sequel I think *I shall prove that such a con-*
" *spiracy does exist in this case.*"—Such is the argument of Mr. Sergeant Best *for the prisoner*. He admits the force of the coincidence of testimony in the accomplices; and that it is only to be got rid of by *shewing* a conspiracy between them, and he admits that this is not *prima facie* to be presumed, from their character of accomplices; but that it lies on the prisoner to show that it exists. The argument is every way important on this subject, especially as in another part of that able and eloquent advocate's speech, he endeavours to restrict the use of accomplices within narrower bounds than it is admitted by all it can be restricted

to. But since, as I have observed, the question has never been submitted to judicial consideration, or undergone judicial determination, we may be permitted to reason upon it. To one who has practically felt the effect of coincidence of testimony, and who has not only felt in himself, but observed in others, the perfect conviction of the truth of the narrative which the concurrence of several unconnected witnesses produced, notwithstanding the impeachment under which each separately laboured, little need be said upon this subject. The mind gives its assent in such a case, by a prompt and natural effort, and the understanding follows, rather to secure and fortify the position, which the mind has taken, than to carry it. If we could think of submitting such a question to cold calculation, we should find that the probability of falsehood is in the inverse ratio of the number of accordant witnesses; and that the probability of truth increases, not in arithmetical, but nearly in geometrical progression. Thus, if the greater probability of truth, where there are two witnesses than where there is but one, be as two to one; where there are three concurrent witnesses it will be, not as three, but as six to one. For the number three is capable of a threefold combination, to each of which the ratio of two to one applies. Thus, if there be A, B, and C, concurring, the probability of truth, (or the im-

probability of falsehood) is two to one as to A and B; it is two to one as to B and C; and it is two to one as to A and C—therefore, it is six to one that where A, B, and C, concur in the same story, that story is true. The frame of men's minds is so dissimilar, the motives which act upon them are so different, the wheels which those motives put in motion are so various, and the combinations of their movements so infinitely diversified, that it is next to impossible that two men perfectly unconnected, sitting down to invent a story upon the same subject, should agree not only in the incidents, but in the dramatis personæ, and the parts they severally acted. The disposition to confide in concurrent testimony is natural to the mind of man. It is implanted in our breasts by the Author of our nature, for the wisest and best purposes. Without it, the business of life could not go on; history would be a fable; and the most important truths which concern the dearest interests of man might strike upon the ear, but would never sink into the heart. Whenever, therefore, this question comes forward for decision, there can be no doubt entertained how it will be decided.

THE END.

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